

Settlement Agreement

Between

the United States of America

and

San Bernardino City Unified School District

PURPOSE

San Bernardino City Unified School District (the “District”) agrees to comply fully with this Settlement Agreement (“Agreement”) to address and resolve noncompliance with Section 1703(f) of the Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1701 *et seq.* (“EEOA”). The EEOA requires the District to take “appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.” 20 U.S.C. § 1703(f).

In November 2010, after investigating the District’s services for ELs with disabilities, and its gifted and talented program, the United States identified several issues that the District needed to remediate to comply with Section 1703(f) of the EEOA. Subsequently, the District periodically reported on its progress in implementing the necessary reforms. Beginning in 2018, the United States conducted a review of the District’s efforts to comply with the EEOA, analyzing data on thousands of ELs, reviewing hundreds of pages of documents, and conducting a site visit that involved classroom observation, and interviews of administrators and staff. In 2020, the United States expanded its review to include issues involving the provision of adequate services for ELs, including the design and implementation of the District’s English Language Development (“ELD”) program. In addition to conducting a comprehensive analysis of the District’s data relating to its EL programming, the United States also conducted virtual interviews of administrators and staff at the District Central Office and at several schools.

Based on this thorough review the United States identified a number of conditions in the District’s EL programs and practices that the District needs to address to comply with Section 1703(f) of the EEOA. *First*, the United States concluded that the District failed to provide its EL students with appropriate and adequate language services. The United States determined that the District deprived many secondary school ELs of necessary focused instruction in ELD, failed to group students by their level of proficiency in English when providing ELD, and prematurely exited students from the EL program. *Second*, the United States found that the District did not provide its EL students with qualified staff to implement the EL program adequately. Specifically, the United States concluded that core content staff responsible for integrating ELD into their lessons were not properly trained, and, as a result, many ELs lacked meaningful access to core content classes. In addition, the United States determined that the District lacked adequately certified staff to provide focused instruction in ELD. *Third*, the United States found that the District failed to conduct evaluations of ELs for special education services in their native language, and failed to consider whether ELs with disabilities required native language instruction in order to meaningfully participate in the educational program in the District. *Fourth*, the United States found that the District failed to ensure ELs had adequate access to the District’s gifted and talented program and to advanced coursework in high schools. *Fifth* and finally, the United States determined that the District did not adequately monitor and evaluate its EL programs for effectiveness.

The parties undertake this Agreement to avoid litigation and for the purposes of judicial and governmental economy. This Agreement also memorializes those remedial measures already started by the District.

DEFINITIONS

- **Core Content** refers to elementary and secondary Math, Science, Social Studies, and English Language arts (e.g., an English, reading, or writing class).
- **“English Learner”** or **“EL students”** are students who require assistance to overcome language barriers that impede their equal participation in the District’s instructional program.
- **“English Language Development”** or **“ELD”** shall mean the teaching of English language skills to students who are in the process of learning English and includes Designated ELD and Integrated ELD for purposes of this Agreement.
 - **“Designated ELD”** shall mean direct, explicit instruction about the English language to EL students at the same or comparable English Language Proficiency Levels, that provides a systematic and developmentally appropriate approach to improve English language skills, knowledge, and abilities and to support content learning in English.
 - **“Integrated ELD”** shall mean ELD instruction provided in the general education classroom setting by embedding the ELD within core content instruction (i.e., English Language Arts, Math, Science, and Social Studies). This instruction includes an array of teaching strategies to make core content classes more comprehensible and accessible to EL students while promoting their ELD, including: scaffolding and differentiated instruction based on English Language Proficiency Level that meets individual language needs and provides meaningful access to content instruction; teaching to language objectives that help EL students achieve content objectives; building and activating background knowledge; explicitly teaching academic vocabulary; using supplementary and adapted materials, texts, and visual displays; grouping ELs by English Language Proficiency Level; cooperative learning and group work; offering primary language support; providing comprehensible input and clarification; promoting academic discussions; teaching content-area reading and writing skills; using formative and summative assessments of language and content objectives with EL accommodations; and giving proficiency-level appropriate feedback on EL students’ language use and demonstration of content knowledge.
 - Both Designated and Integrated ELD instruction shall address the listening, speaking, reading, and writing standards in the ELD Standards adopted by the California Department of Education.
- **“English Language Proficiency Assessments of California”** and **“ELPAC”** refers to the examination used to assess the English language proficiency of students in California in grades kindergarten through twelve whose primary or home language is other than English. ELPAC includes both the initial assessment used to identify EL students and the annual assessment of their progress toward proficiency in English.

- **“English Language Proficiency Level”** shall mean the EL student’s composite level of English language skill in the four language domains (listening, speaking, reading, and writing) as determined by a student’s overall score on the ELPAC (or any future valid and reliable English language proficiency assessment of each of the four language domains that the California Department of Education uses). Students can score between 1 (the least developed level of English proficiency) and 4 (the most developed level of English proficiency) on the ELPAC.
- **“English Language Development Standards”** shall mean the English Language Development Standards adopted by the California Department of Education. These standards are derived from the four language domains of speaking, listening, reading, and writing, and are aligned with California’s English Language Arts standards. These standards provide benchmarks of progress for EL students at various levels or grade spans and at different English Language Proficiency Levels.
- **“English Learner students”** or **“EL students”** shall mean students who require assistance to overcome language barriers that impede their equal participation in the District’s instructional programs.
- **“Former EL student”** shall mean a student who was formerly an EL student and subsequently met valid and reliable criteria for exiting the EL program, including demonstrating proficiency on a valid and reliable assessment of English Language Proficiency in all four language domains (listening, speaking, reading, and writing).

GENERAL REQUIREMENTS

1. The District will take “appropriate action to overcome language barriers that impede equal participation” by students in its instructional programs. 20 U.S.C. § 1703(f).

SPECIFIC REQUIREMENTS

Provision of EL Services and Access to the Core Curriculum

2. The District will provide all EL students with at least one daily period¹ of Designated ELD taught by a teacher with appropriate certifications based on California requirements.²

3. The District agrees that ELD is a core subject for EL students. The District will provide daily Designated ELD to EL students in addition to other core subjects, except that the District may provide Designated ELD through a core literacy class (such as an English Language

¹ A “period” is at least equivalent to the time allocated for core content subjects.

² California requires all teachers instructing ELs to receive certain authorizations or certifications. Cal. Ed. Code § 44253.3; 44253.4. The California Commission on Teacher Credentialing provides more detail about the appropriate certifications for teachers of Designated and Integrated ELD. *See* California Commission on Teacher Credentialing, *Appropriate Credentials for English Learner Services* (Sept. 21, 2021), <https://www.ctc.ca.gov/credentials/calsaas-information/Appropriate-credentials-for-EL>.

Arts class) for EL students in secondary schools with an English Language Proficiency Level of 4. The District may only provide Designated ELD through a core literacy class if the class is:

- A. taught by a teacher who has the appropriate certifications to teach both Designated ELD and English Language Arts, based on California requirements, and who provides explicit Designated ELD to the EL students; or
- B. co-taught by a teacher who has the appropriate California certification to teach Designated ELD and a teacher who has the appropriate certification to teach English Language Arts who have co-planning time together, and the teacher with the appropriate certification to provide ELD provides Designated ELD to the EL students.

The District must collect and maintain accurate data on the type and amount of Designated ELD provided to each EL.

4. For purposes of providing Designated ELD, the District shall group EL students by their English Language Proficiency Level within a single grade to the extent possible. When necessary because of low numbers of EL students in a particular grade and English Language Proficiency Level, the District may group EL students by (a) their English Language Proficiency Level and vertically across grades (limited to two consecutive grades at the elementary level); or (b) two comparable, consecutive English Language Proficiency Levels within a single grade.

5. To ensure meaningful access to grade-level core content instruction, the District shall ensure that all EL students receive Integrated ELD in English Language Arts, Math, Science, and Social Studies where instruction is primarily in English and teachers use a variety of strategies (including but not limited to those in the definition of Integrated ELD above) to make lessons comprehensible to EL students while promoting their ELD.

6. The District shall ensure that teachers of Designated and Integrated ELD document in their lesson plans: 1) the English Language Development Standards being taught and how they will be used to differentiate instruction for the different English Language Proficiency Levels of EL students in the class; 2) the language and content objectives for each lesson; and 3) the ELD strategies used to deliver the content to EL students. Teachers of Designated ELD and homeroom teachers in elementary schools/content area teachers in secondary schools will work together on what they teach to EL students in reading and writing to reinforce content standards in their Designated and Integrated ELD instruction.

Staffing and Professional Development

7. The District shall ensure that teachers of Designated ELD have the appropriate certification(s) based on California requirements. Such efforts shall include (a) requiring the District's current Designated ELD teachers to obtain the appropriate certification(s) within a year; (b) recruiting Designated ELD teachers who have the appropriate certification(s) or are willing to earn appropriate certification(s) within a year; and (c) requiring that any newly hired teacher of Designated ELD who lacks the appropriate certification(s) take steps to earn it within a year of their date of hire.

8. The District shall ensure that teachers of Integrated ELD have (a) appropriate certification(s) to provide instruction in their content area(s); (b) have appropriate certification(s) to instruct ELs; and (c) have completed the training required by Paragraph 9 on how to use effective strategies to integrate ELD into core content to make the content accessible to EL students and promote their ELD across the four domains. The District require teachers providing Integrated ELD instruction who are not properly certified to obtain appropriate certification(s) within a year.

9. Within 90 days of the effective date of this Agreement, the District will submit a professional development plan and proposed training materials to implement the first year of the plan to the United States for review and approval. The District shall submit to the United States for review and approval all training materials to carry out the remaining requirements of the professional development plan at least 90 days before the training session at which those materials are to be used. If the United States does not approve the professional development plan or materials, it shall provide comments and edits to guide the District's revisions. The parties shall work cooperatively to produce a professional development plan and training materials that the United States approves. Under the professional development plan, the District will provide annual training as follows:

- A. All appropriately certified teachers of Designated ELD shall receive (i) five hours of in-person training on language acquisition, English Language Development Standards, and research-based strategies for Designated ELD instruction, including how to deliver small group ELD instruction effectively; and (ii) three hours of in-class support on using these strategies. Teachers of Designated ELD who have not yet obtained appropriate certification(s) shall receive annually: (i) at least ten hours of in-person training on effective strategies for providing Designated ELD for EL Students and (ii) at least five hours of in-classroom support on using those strategies. In-classroom support includes, but is not limited to: coaching from the trainer or an EL specialist with expertise in Designated ELD, including co-planning Designated ELD lessons for EL students; observing the teachers-in-training deliver these lessons in class (with modeling as appropriate from the trainer or EL specialist); and sharing constructive feedback on the observed lesson.
- B. All District core content teachers of EL students shall receive annually: (i) at least ten hours of in-person training on effective strategies for providing Integrated ELD for EL students and promoting their ELD in all four language domains, consistent with the definition of Integrated ELD above; and (ii) at least five hours of in-classroom support on using those strategies. In-classroom support includes, but is not limited to: coaching from the trainer or an EL specialist with expertise in Integrated ELD, including co-planning Integrated ELD lessons for EL students; observing the teachers-in-training deliver these lessons in class (with modeling as appropriate from the trainer or EL specialist); and sharing constructive feedback on the observed lesson.
- C. All teachers, and school and District administrators shall receive annual training on how to interpret EL-related data to make data-driven decisions for

lesson planning, resource allocation, and professional development and support.

- D. Principals and other administrators who evaluate teachers of EL students shall receive: at least five hours of training regarding their responsibilities under this Agreement; at least ten hours of training on how to identify and support effective Designated ELD and Integrated ELD strategies in classroom instruction; and at least five hours of training on how to use the classroom observation tool and walk-through protocols described in Paragraph 12 to provide constructive feedback to teachers during and/or after classroom walkthroughs.

10. The District shall ensure that the professional development described in Paragraph 9 is of sufficient duration and gives teachers practical instructional strategies. Specifically, the District will ensure that the professional development plan provides teachers training on how to plan, deliver, and adapt content for EL students within the context of the English Language Development Standards. In addition, the plan must provide teachers with sufficient opportunities for modeling (with expert support), practicing, and receiving feedback regarding such strategies (coaching).

11. The District shall ensure that schools' master schedules allow all teachers of Designated ELD to:

- A. attend grade-level meetings at least bimonthly to support grade-level homeroom and core content teachers to integrate ELD within core content instruction; and
- B. have at least one period of protected lesson preparation time per day so they are able to plan targeted language instruction that reinforces core content being taught in the integrated setting.

12. The District shall develop a classroom observation teacher feedback tool and walk-through protocols for use by administrators and any other staff tasked with monitoring and evaluating teachers in all schools to evaluate teachers' implementation of Designated ELD and Integrated ELD teaching strategies. Within 90 days of the Agreement's effective date, the District will provide its proposed classroom observation teacher feedback tool and walkthrough protocols to the United States for review and approval. If the United States does not approve the classroom observation teacher feedback tool, it shall provide comments and edits to guide the District's revisions. The parties shall work cooperatively to produce a classroom observation teacher feedback tool and walkthrough protocols that the United States approves. Within 45 days of the United States' approval of the tool, the District will train its administrators and master and mentor teachers on using the tool.

Special Education

13. All provisions of this Agreement apply equally to ELs with disabilities. No EL with a disability will be denied Designated or Integrated ELD due to the student's disability; nor will that student be denied special education services due to his/her EL status.³

14. The District's Special Education Department will be responsible for identifying, locating, and evaluating ELs with disabilities who need special education and related services, including taking the following steps:

- A. Assessing ELs for special education eligibility in the language (or other mode of communication) and form most likely to yield accurate information regarding what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;
- B. Conducting initial and subsequent special education evaluations for ELs using trained and qualified personnel who are proficient in the students' primary language. To the extent that such personnel are currently unavailable to the District, the District will make its best efforts to locate and obtain the services of such personnel through contracts or other means;
- C. Ensuring that assessments and other evaluation materials are valid and reliable in light of the student's language proficiency and language background; and
- D. Interpreting or translating special education evaluation reports and assessment materials in the primary language of the student's parents/guardians.

15. The District will take the following steps to ensure that EL students with disabilities receive appropriate services and that limited English proficient ("LEP") parents/guardians are included in the Individualized Education Program ("IEP") planning process, or the planning process under Section 504 of the Rehabilitation Act of 1973 ("Section 504"):

- A. When the District notifies a parent/guardian of an EL or an LEP parent/guardian of an IEP meeting, the notice will be in the parent's/guardian's primary language and will inform the parent/guardian of the right to obtain an interpreter at the IEP meeting. This notice will explain to the parent/guardian how to request an interpreter. When parents/guardians make such requests with reasonable notice (i.e., at least three days prior to the IEP meeting), the District will provide interpretation services at the IEP meeting.

³ The District will provide Designated and Integrated ELD to EL students with disabilities unless the District receives a valid waiver from parents/guardians or, in rare cases, a student's Individualized Education Program ("IEP") team determines and documents in the student's IEP that the student's disability is so severe that it would be unreasonable to expect that the student will ever be capable of using or understanding language. The student's parent(s)/ guardian(s) must be informed in writing in a language they understand, using qualified interpreters and translators.

- B. The District will reasonably modify current practices so that it can provide a translated copy of the IEP template at least five days before the IEP meeting to LEP parents/guardians who speak Spanish. After the IEP meeting, upon the request of a parent/guardian, the District will provide a copy of the completed IEP translated in the parent's/guardian's primary language within a reasonable period of time, but no later than 10 business days following the District's receipt of the request. The District may use a translation template for whichever portions of the IEP are common across all IEPs.

16. The District will train its special education teachers, core content teachers, and teachers of Designated ELD who work with EL students with disabilities on how to provide services to EL students with disabilities, particularly disabilities affecting language acquisition and written and oral language processing and expression. This training will include at least one annual joint planning meeting with special education teachers, core content teachers, and teachers of Designated ELD at each school to discuss the procedures for timely identifying and serving EL students with disabilities with ELD and special education services. Each school also will maintain a list of staff members who have knowledge and experience regarding EL needs, services, and language and cultural backgrounds, and the intersection of EL and special education services. To the extent practicable, the District will ensure that at least one person from this list is present at all special education meetings for EL students.

17. The District will ensure that IEP teams consider the language needs of EL students with disabilities as those language needs relate to their IEP requirements for a "free and appropriate education" ("FAPE"). Specifically, the District shall develop a guidance document for IEP and Section 504 teams to utilize in determining whether to provide primary language supports to EL students with disabilities, what particular supports to provide, and how to provide them. Within 90 days of the Agreement's effective date, the District will provide its proposed guidance on providing primary language supports to the United States for review and approval. If the United States does not approve the primary language supports guidance, it shall provide comments and edits to guide the District's revisions. The parties shall work cooperatively to produce a guidance for providing primary language supports that the United States approves. Within 45 days of the United States' approval of the guidance, the District will train its special education staff on using the guidance.

18. The District will inform all special education staff that IEP and Section 504 team meetings involving eligibility determinations, determining or changing services, and revaluations for each EL student with a disability must include a teacher with the appropriate certification to provide instruction to ELs who: (a) is knowledgeable about EL services and EL students' needs, language background, and cultural background; (b) has received training regarding their responsibilities under this Agreement; and (c) whenever possible, is familiar with the EL student's needs. For all other IEP and Section 504 team meetings, the District will secure at least the input of this teacher, if they cannot attend the meeting. If, prior to any IEP or Section 504 team meeting, this teacher is not already knowledgeable about the student, the District will require the teacher to access and review the student's files prior to the IEP or Section 504 meeting.

Gifted and Talented Programs and Advanced Courses

19. The District shall ensure that written information regarding admission to and requirements for completion for the gifted and talented program, honors-level coursework, Advanced Placement coursework, and the International Baccalaureate program are provided to parents/guardians in a language they understand. This information shall be translated into Spanish and distributed to parents/guardians speaking Spanish. Parents/guardians speaking languages other than Spanish shall be promptly provided written or oral translations of the documents in a language they understand either upon the parents'/guardians' request or if the need for such translation becomes apparent. The District shall provide to the United States a copy of any materials sent to parents, and a copy of any translations of those materials requested.

20. The District shall propose written procedures that ensure that ELs have an equitable opportunity to participate in the gifted and talented program. The procedures will include (i) a list of indicators of giftedness to look for in ELs; (ii) written reminders that ELs may be eligible for gifted and talented services under measures of giftedness or talent other than traditional measures such as standardized test scores; (iii) written reminders that English fluency is not a criterion for gifted and talented program eligibility; and (iv) an explanation of the gifted and talented referral process. Within 90 days of the Agreement's effective date, the District will provide these proposed procedures to the United States for review and approval. If the United States does not approve the procedures, it shall provide comments and edits to guide the District's revisions. The parties shall work cooperatively to produce procedures that the United States approves. The District will provide professional development on these procedures to principals and teachers.

21. The District shall propose written procedures that ensure that ELs have an equitable opportunity to participate in advanced courses and programs in secondary schools. The procedures will include (i) an explanation of the criteria, prerequisites, and process for enrolling students in advanced courses and programs; (ii) guidance on potential indicators that an EL meets the criteria to enroll in an advanced course or program; and (iii) written reminders that English fluency is not a prerequisite for enrollment in advanced courses and program. Within 90 days of the Agreement's effective date, the District will provide these proposed procedures to the United States for review and approval. If the United States does not approve the procedures, it shall provide comments and edits to guide the District's revisions. The parties shall work cooperatively to produce procedures that the United States approves. The District will provide professional development on these procedures to principals and teachers.

22. The District may utilize testing as one method for identifying gifted and talented identification, although it must also implement other non-testing methods of identification simultaneously. The District will translate test directions into Spanish and will provide the directions in lower-incidence languages upon request.

23. The District will implement parent/guardian outreach strategies to inform parents/guardians of EL students and LEP parents/guardians in their primary language about (a) the gifted and talented program, including what the program offers, the referral process, and how to obtain more information about the program; and (b) advanced course offerings in secondary school, including the courses and programs offered, the criteria and prerequisites for enrolling in

these courses and programs, the process for enrolling in these courses and programs, and how to obtain additional information about the courses and programs.

24. The District will track EL students' participation in the gifted and talented program and advanced courses. The District will annually evaluate this data and determine whether to take affirmative steps to improve its EL identification and participation rates. Changes may include, for example, making changes to its screening criteria, and conducting additional outreach to and education of parents/guardians of EL students and LEP parents/guardians regarding the gifted and talented program and the advanced courses and programs offered in secondary schools.

Program Monitoring and Evaluation

25. The District will monitor the EL services and English Language Proficiency progress of current EL students and the academic performance of current and former EL students through its electronic student information system(s). To facilitate its monitoring of current and former EL students, the District will maintain the following information electronically and in hard copy in each student's permanent educational record: the home language survey, whether the parent needs translations and/or an interpreter; family history forms; the EL student's initial and annual English Language Proficiency assessment levels in all domains; the nature of an EL student's Designated ELD (e.g., length of daily period of Designated ELD, ELD from a certified teacher in an English Language Arts class, etc.), and their Integrated ELD (e.g. ELD received from a certified teacher who has received the requisite amount of training, etc.). To permit evaluations of its EL programs over time, the District will maintain in its student database the following data in separate fields: all initial screener and annual English Language Proficiency assessment scores, including the ELPAC and any other assessments previously used by the District; standardized test scores; retention, drop out, and graduation data; whether the student is a long-term EL student (i.e., identified as an EL student for six years or more), an opt-out EL student, a former EL student, or a newcomer EL student; the year that the student was designated as an EL student; school and EL program in which the EL student participated; whether the student has a 504 Plan or IEP; and the type(s) of disability (e.g., intellectual disability).

26. The District will review the following data on a quarterly basis for each EL student to ensure that each receives the EL services required by this Agreement: English Language Proficiency Levels overall and in the four language domains; the amount of EL services (e.g., 45-minutes of designated ELD per day); if the EL student has a disability for which he or she is receiving disability-related services (or has been referred for a special education evaluation, if applicable); and if the EL student opted out of or exited the EL programs.

27. The District will use valid and reliable criteria for exiting EL students from EL programs and EL status, including a grade-appropriate valid and reliable assessment of the student's English Language Proficiency level in each of the four language domains. Twice a year, the District will monitor the academic performance of each former EL student by reviewing their standardized test scores, composite and domain scores on the ELPAC at the time of exit, and progress reports for grades, attendance, preparation, and behavior to determine if the student (a) needs any academic support services (e.g., tutoring) or (b) needs to be retested for possible

reentry into the EL program. If a former EL student fails to make academic progress and the student's core content teacher(s), in consultation with a teacher appropriately certified to instruct ELs, determine that this failure may be because of a lack of English proficiency in one or more language domains, the District will notify the student's parents, offer EL services, and provide the student with services to which the parent consents. Each District school will document its monitoring of former EL students, including any identified language barriers and offers of EL services, and send its monitoring reports to the District's EL Department.

28. The District will monitor all schools for compliance with this Agreement. The EL Department will develop and implement school-level audit procedures to evaluate the quality and effectiveness of the EL program at each school and District-wide, based on students' EL services, students' English Language Proficiency levels and academic performance, teacher evaluations, and staffing and resources allocations. The District will provide its audit procedures to the United States for review and approval within 90 days of the Agreement's effective date. The United States will provide its feedback to the District within 60 days. The District will implement the audit procedures within 30 days of the United States' approval of the procedures. At each school, an administrator will monitor the data required by Paragraph 26 to ensure that each student receives the appropriate amount and type of services and progresses academically.

29. The District will evaluate the effectiveness of each of its EL programs or services to determine whether they are overcoming students' language barriers within a reasonable period of time and enabling EL students to participate meaningfully and equally in all of the District's educational programs. To that end, the District agrees to conduct a longitudinal cohort analysis of EL programs at the elementary, middle, and high school levels by disaggregating and monitoring the following data by current, former, and never EL students for each EL program used by the District: standardized test scores, exit rates, dropout rates, graduation rates, retention-in-grade rates, English Language Proficiency assessments, including ELPAC scores, whether the student is a long-term EL (i.e., identified as an EL for more than five years), and enrollment in special education and enrichment programs (e.g., gifted, honors, and Advanced Placement classes). In conducting the analysis, the District will track a cohort of EL students who were enrolled in kindergarten, third grade, sixth grade, and ninth grade in the 2020–21 school year and who remain enrolled in the District over the term of this Agreement. The District will use the results of its longitudinal analysis to inform EL program decisions and ensure the effectiveness of every EL program.

REPORTING

30. In addition to any reporting requirements provided above, the District will provide to the United States annual compliance reports in electronic format. Each year by October 1, the District will provide a report consisting of the information requested in Paragraph 30.A. After the completion of each school year, by July 1 at the latest, the District will provide a report of the information requested in Paragraphs 30.A-E for the previous school year. If any required information is available in a document that the District already has prepared to comply with

federal or state laws or regulations, the District may include the document in its reports and indicate the section of the report to which the document applies.⁴

A. Provision of EL Services and Access to the Core Curriculum

- 1) For each individual EL student: local student ID number; school; grade level; English Language Proficiency Level; most recent overall and domain scores on the ELPAC; language background; opt out (Y or N); amount of Designated ELD instruction per week; name of Designated ELD teacher(s); whether the Designated ELD teacher has the appropriate certification based on California requirements (Y or N); whether the Designated ELD teacher has completed the training required by Paragraph 9.A; the subject of each Integrated ELD class; name of the each Integrated ELD teacher; whether each Integrated ELD teacher has the appropriate certification based on California requirements (Y or N); whether each Integrated ELD teacher is on track to complete the training required by Paragraph 9.B (Y, N); number of years identified as an EL student; long-term EL student (Y or N); special education (Y or N); primary disability; and gifted and talented (Y or N).
- 2) For each school, the number of EL students in total who have not opted out and:
 - a. are not receiving any Designated ELD;
 - b. are not receiving the requisite amount of Designated ELD under Paragraph 2;
 - c. are not receiving Designated ELD from a teacher with the appropriate California certification;
 - d. are not receiving appropriately grouped Designated ELD under Paragraph 4; and
 - e. are not receiving Integrated ELD in English Language Arts, Math, Science, and Social Studies from certified staff.
- 3) For each Designated ELD class in each secondary school, the number of students enrolled in the class disaggregated by most recent ELPAC score and grade level.

⁴ The District will provide all reports, plans, and other items required by this Agreement electronically to counsel for the United States via the email listed in the signature blocks below, if feasible, and will encrypt or password-protect all files containing personally identifiable information. For voluminous data or files, the District will provide such information electronically via other means as agreed to by the United States (e.g., using the Justice Enterprise File Sharing platforms).

B. Staffing and Professional Development

- 1) A report that includes for each school:
 - a. The total number of teachers of Designated ELD and the breakdown of the number of teachers (i) with the appropriate California required certification and (ii) without the appropriate California required certification;
 - b. The total number of core content teachers and the breakdown of the number of core content teachers (i) with the appropriate California required certification(s) and (ii) without the appropriate California required certification(s).
- 2) A report that includes teachers by name, subject, school, whether they are co-teaching EL students and whether they (i) have started, or (ii) have completed the annual professional development required by Paragraph 9, including the hours of (a) training and (b) in-class support they received.
- 3) A report that includes the teachers by school, name, and subject/grade-level who were hired:
 - a. Before the Agreement's effective date and have obtained or are attempting to obtain the appropriate certifications required by California.
 - b. After the Agreement's effective date, indicating for each teacher whether they have obtained or are attempting to obtain the appropriate certifications required by California within a year.
- 4) The District's professional development plans for the upcoming school year related to the implementation of this Agreement (*e.g.*, trainings required by Paragraphs 9, 12, 16, 20, and 21), including each training's date, title, target audience, hours, mandatory/voluntary status, and facilitator.
- 5) A list of every training conducted during the previous year pursuant to Paragraphs 9, 12, 16, 20, and 21 including the attendance sheets for each training.

C. Access to Special Education Services.

- 1) For each individual EL student who was evaluated for special education services since the previous report: local student ID number; school; grade level; English Language Proficiency Level; date of initial evaluation for special education services; native language;

language of evaluation; if applicable, the name of person who interpreted the evaluation; name of person who evaluated the student; whether student was identified as having a disability, including each disability identified; whether student received special education services; date of triennial assessment; date of IEP; whether IEP team considered providing student primary language supports; and, the nature of any supports provided.

- 2) A list of all requests for translation of IEP documents, the date the request was made, and the date the translated IEP was provided to the requesting parent.
- 3) A list of the special education and Designated ELD teachers by school who received the training required by Paragraph 16.
- 4) A list of qualified bilingual special education evaluators by name, language(s), and specialty area whom the District uses to evaluate EL students suspected of having disabilities.

D. Access to the gifted and talented program and advanced courses

- 1) A list of the ELs, former ELs, and never ELs who were considered for admission into the gifted and talented program by school, grade, primary language, EL status at the time of consideration, source of consideration (*e.g.*, screening test or referral), if applicable source of referral, whether student was determined eligible, and whether student was ultimately enrolled in the gifted and talented program.
- 2) The number of ELs, former ELs, and never ELs at each school who are enrolled in at least one Advanced Placement course, at least one Honors class, or in the International Baccalaureate program.
- 3) A report of the number of requests received to translate instructions for the screening test, whether instructions were translated, and the languages of translation, if applicable.
- 4) A list of translated District-level and school-specific documents related to the gifted and talented program, and to advanced courses and programs at the secondary school level by title of the document and the languages in which it was translated.
- 5) A report on outreach strategies developed and implemented by the District as required by Paragraph 23.
- 6) A report of the District's annual evaluation of access to the gifted and talented program and advanced courses conducted under Paragraph 24.

E. Monitoring & Program Evaluation

- 1) A list of all former EL students who exited the District's EL programs and are under monitoring at the time of each report. For each student: student ID; school; exit date; number of years in the District's EL programs prior to exit; and ELPAC scores (composite and domain scores).
- 2) A report of the District's quarterly review under Paragraph 26 and its twice-yearly review under Paragraph 27.
- 3) The District will complete the longitudinal study described in Paragraph 29 by the end of the 2024–25 school year and provide the results of that study to the United States by August 1, 2025.

31. At least 60 days prior to the desired implementation date, the District will inform the United States in writing, for the United States' review and approval, of all proposed substantive changes or additions to its EL programs, including those based on the results of the longitudinal study, and all changes to EL program policies, procedures, and practices. If the United States does not approve of the proposed changes, it will notify the District in writing within 60 days of receiving the District's proposed changes and the District and the United States together will work to resolve the United States' concerns.

ENFORCEMENT

32. The effective date of this Agreement will be the date when both parties have signed the Agreement. The Agreement will remain in effect for three full school years following that date, subject to the terms of Paragraphs 33-39 below.

33. For the duration of this Agreement, the District will preserve and maintain all records and documents, including all electronically stored information, used to compile required reports and all other documents related to its compliance with the Agreement. The District will provide such information promptly to the United States upon request.

34. The District will provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. With reasonable advance notice, the United States, through its representatives and any consultant or expert it may retain, may conduct site visits (in person or remotely), observe EL student instruction (in person or remotely), interview staff and students, and request any additional reports, information, or data necessary to monitor the District's compliance with this Agreement and with the Equal Educational Opportunities Act. The District will make the requested reports, information, or data available for review within 30 days. The United States also may speak directly, without District counsel and without fear of retaliation against District staff, with District employees who are not administrators and have questions, concerns, or other information to raise with the United States regarding the District's obligations under the EEOA and this Agreement.

35. In the event of a breach by the District of this Agreement, the United States may initiate judicial proceedings in the United States District Court for the Central District of

California to enforce the EEOA and the specific commitments and obligations of the District under this Agreement. However, the parties agree that, prior to the initiation of judicial proceedings, they will negotiate in a good faith effort to resolve the breach for 30 days or until an impasse is reached.

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 and confer 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. This Agreement will be binding upon the successor members of the District's Board of Education and successor administrators. The District understands and acknowledges that this Agreement does not relieve the District from its other obligations under the EEOA or other federal laws. The United States, consistent with its responsibility to enforce the EEOA, 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 will remain in effect until the United States determines that the District has complied fully with its provisions and its obligations under the EEOA. The parties anticipate that the District will achieve compliance after it submits its annual report on October 1, 2025. The United States will notify the District of any compliance-based objections within 90 days of receiving the October 2025 report.

39. The parties may, upon mutual written agreement, amend this Agreement.

40. The following signatures indicate the consent of the parties to the terms of this Agreement, which is effective upon its mutual execution. The District representative, by signing this document, gives assurances that the representative has the authority to bind the District, including successor members of the District's School Board and successor administrators, for the Agreement's duration.

For the United States:

E. MARTIN ESTRADA
United States Attorney
Central District of California

DAVID M. HARRIS
Chief, Civil Division

Richard Park

RICHARD M. PARK
Chief, Civil Rights Section,
Civil Division

Katherine M. Hikida

KATHERINE M. HIKIDA
Assistant United States Attorney
Civil Rights Section, Civil Division
United States Attorney's Office
300 North Los Angeles Street, Suite
7516

Los Angeles, California 90012
(213) 894-2285
katherine.hikida@usdoj.gov

KRISTEN CLARKE
Assistant Attorney General

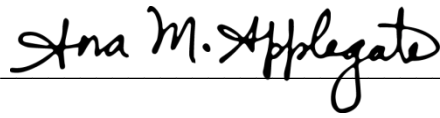
Ajay S.

SHAHEENA A. SIMONS, Chief
RENEE M. WOHLLENHAUS, Deputy Chief
AJAY P. SAINI, Trial Attorney
Educational Opportunities Section
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, N.W. – 4CON
Washington, DC 20530
(202) 598-1651
ajay.saini@usdoj.gov

Attorneys for the United States

Date: 12/15/2022

For the San Bernardino Unified School District:



Date: 12/15/2022_____

ANA APPLEGATE
Assistant Superintendent
San Bernardino City Unified School
District
777 North F Street
San Bernardino, California 92410