

**Settlement Agreement**  
**Between**  
**the United States of America**  
**and**  
**the Newark Board of Education**

## **PURPOSE**

The Newark Board of Education (the “District”) agrees to comply fully with this Settlement Agreement (“Agreement”) to address and resolve alleged noncompliance with the Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1701 *et seq.* (“EEOA”), which 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).

After opening an investigation into a complaint and thoroughly reviewing the District’s program for English Learner students (“ELs”), the United States Department of Justice (“United States”) identified aspects of the District’s EL programs and practices that it found do not comply with Section 1703(f) of the EEOA. Specifically, the United States found that the District: (1) failed to appropriately identify and assess potential ELs, resulting in under-identification of EL students; (2) places ELs in schools or classrooms that lack EL services, without obtaining knowing and voluntary waivers from their parents; (3) fails to assess the English language proficiency of ELs whose parents waived, or “opted out” of, services; (4) does not communicate effectively with Limited English Proficient (“LEP”) parents; (5) fails to provide sufficient EL services to hundreds of ELs; (6) does not adequately staff its EL programs with enough teachers certified/endorsed in bilingual and English as a Second Language (“ESL”) instruction; (7) fails to provide adequate language services to ELs with disabilities; (8) did not ensure that ELs were proficient in English before they were exited from EL programs; (9) does not adequately monitor the academic progress of its former ELs; and (10) does not properly evaluate its EL programs for effectiveness.

The District and the United States share the goal of ensuring that the District’s ELs receive the instruction and support they need to become proficient in English and to participate equally in school. The parties enter into this Agreement as a means of alternative dispute resolution to avoid litigation and to promote judicial and governmental economy. Without admitting any violation or non-compliance with the EEOA or any other law, and without admitting the accuracy of any of the findings of the United States, the District agrees to implement the remedial measures in this Agreement to resolve the issues that the United States identified in its investigation. Where the District has already initiated remedial measures, this Agreement memorializes them. The Agreement’s effective date will be the date when both parties have signed the Agreement. The Agreement will remain in effect through December 31, 2024, subject to Paragraphs 46-50 below.

## DEFINITIONS

- **Bilingual-Endorsed Teacher** refers to a teacher who holds an endorsement in bilingual education from the New Jersey Department of Education. Bilingual education includes Full-time Transitional Bilingual, Part-time Transitional Bilingual, and Dual Language instruction, and is taught by a Bilingual-Endorsed Teacher under this Agreement.
- **Core Content** refers to elementary and secondary math, science, social studies, and English/language arts (e.g., an English, reading, or writing class).
- **Days**, as used in this Agreement, means calendar days except that if a deadline under this Agreement occurs on a weekend or holiday, the due date will be the next business day.
- **English Learners or ELs** are students who require assistance to overcome language barriers that impede their equal participation in the District’s instructional programs.
- **English Language Proficiency** refers to a student’s ability to read, write, speak, and understand the English language as determined by the student’s scores on a valid and reliable English language proficiency assessment of each of the four language domains of speaking, listening, reading, and writing.
- **English as a Second Language or ESL** is direct, explicit instruction about the English language that incorporates a systematic and developmentally appropriate approach to teaching language to ELs. ESL instruction addresses the listening, speaking, reading, and writing standards in the World-Class Instructional Design and Assessment (“WIDA”) English Language Development Standards adopted by the New Jersey Department of Education.
- **ESL-Certified Teacher** refers to a teacher who holds an ESL teaching certificate from the New Jersey Department of Education. ESL is taught by an ESL-Certified Teacher under this Agreement.
- **Former EL** refers to a student who was formerly an EL but subsequently met valid and reliable criteria for exiting the EL program. These criteria include demonstrating proficiency on a valid and reliable assessment of English Language Proficiency in all four language domains (reading, writing, speaking, and listening).
- **Limited English Proficient Parents or LEP Parents** refers to parents who have limited English proficiency in one or more of the four language domains of speaking, listening, reading, and writing. Parents, as used in this Agreement, includes guardians.
- **Long-Term Substitute Teacher** refers to any substitute teacher assigned to fill a vacancy where the vacancy is expected to last longer than 45 calendar days.
- **Major Languages** refers to the District’s most commonly spoken languages among ELs other than English, and includes Spanish, Portuguese, French, Haitian Creole, and any

languages spoken by 100 or more parents in the District based on parental responses to questions on the home language survey each school year.

- **Opt-Out EL** refers to an EL student whose parents opted out of instructional services for ELs by signing a voluntary and informed waiver of such services in a language they understand.
- **Qualified Interpreter and Qualified Translator** means an individual who, whether a paid District employee, contractor, or volunteer: (a) is fluent in the languages in which the individual is communicating; (b) has a demonstrated competence to interpret and translate; (c) is trained in providing the interpretation or translation requested by the District; (d) is sufficiently knowledgeable in both languages of any specialized terminology needed to provide accurate interpretation or translation (e.g., special education terms); and (e) is trained in the ethics of interpretation and translation (e.g., the need for accuracy and confidentiality).
- **Students with Limited or Interrupted Formal Education** refers to a sub-group of ELs who are assessed as two or more grade levels below their grade-level and/or age-level peers in native language literacy and/or math skills, and where the performance gaps are the result of limited or interrupted formal education in their home countries.

### **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**

#### **Identification and Placement of EL Students**

2. The District will continue to require all parents to complete a home language survey during the new student registration process.

3. The District will maintain the position of Bilingual Needs Assessment Teacher at all of its schools. Bilingual Needs Assessment Teachers will assist LEP parents with the enrollment process using Qualified Interpreters and materials translated by Qualified Translators, review responses to the home language surveys, administer assessments to determine students’ English Language Proficiency, and report to and coordinate with the Office of Bilingual Education regarding EL students, former EL students, Opt-Out ELs, and/or EL programs at each school.

4. To properly identify ELs, the District will administer a valid, reliable, and grade-appropriate English Language Proficiency assessment in all four language domains to all K-12 students whose home language survey indicates that a language other than English is spoken at home or by the student, or if there is any other reason to believe that the student is not proficient in English. The District may assess incoming kindergarteners’ English Language Proficiency

only in listening and speaking in the fall semester and no earlier than six months prior to the start of their kindergarten year.

5. The District will administer the English Language Proficiency assessments within the first 20 days of the school year and will place all K-12 students identified as ELs in an appropriate EL program within the first 30 days of the school year. If a student enrolls more than 20 days after the start of school, the District will assess within 10 days of enrollment and place the student within 14 days of enrollment. Within these timeframes, the District will administer its questionnaire to identify EL Students with Limited or Interrupted Formal Education and offer them appropriate ESL instruction taught by ESL-Certified Teachers who are on track to complete the training required by Paragraph 19, using the ESL curricula for these students required by Paragraph 23, and who have completed the additional training regarding these students required by Paragraph 21.

6. The District's Office of Bilingual Education will complete a review of all students to identify any who were not properly assessed under the standard required in Paragraph 4. The District will administer a grade-appropriate English Language Proficiency assessment to all such students as soon as possible, but no later than September 17, 2021. For any student identified as an EL under this paragraph, the District will offer EL services to the student and will communicate the offer to the parents in a language they understand by September 30, 2021. By October 31, 2021, the District will provide the United States with a list of those students. The list will include the date each student was assessed, the resulting assessment scores (domain and composite), the student's EL status, the type and amount of EL services offered to the student, the EL services the student/parent chose, the EL services the student is receiving, and any change in school required to receive EL services (identifying the former and current schools).

7. The District's Office of Bilingual Education will complete a review of all students to identify any who do not have a completed home language survey. The District will administer a home language survey to all such students as soon as possible, but no later than September 17, 2021. Based on those responses, the District will identify any students who were not properly assessed under the standard required in Paragraph 4. The District will administer a grade-appropriate English Language Proficiency assessment to all such students by September 30, 2021. For any student identified as an EL under this paragraph, the District will offer EL services to the student within 20 school days of assessment and will communicate the offer to the parents in a language they understand. By October 31, 2021, the District will provide the United States with a list of these students. The list will include the date each student was assessed, the resulting assessment scores (domain and composite), the student's EL status, the type and amount of EL services offered to the student, the EL services the student/parent chose, the EL services the student is receiving, and any change in school required to receive EL services (identifying the former and current schools).

8. The District will provide all ELs with the EL services required by this Agreement and will ensure that ELs do not need to change schools to receive these services. If any EL ranks a school without EL programs as their first, second, or third choice school on an enrollment application, but is unable to enroll in that school because of lack of space or some other reason (e.g., the EL program is not offered at the EL's/parent's school of choice), the District will document each instance, including the desired school(s), the reason the desired school(s) were

denied, and the school and EL program in which the EL ultimately enrolled. The District will ensure that the EL still receives EL services consistent with this Agreement. The District will similarly document instances in which an EL seeks to rank a school without EL programs as their first, second choice, or third choice school on an enrollment application, but where District personnel counsel the student away from such schools without EL programs during the enrollment process.

9. Before the beginning of the school year in August 2021, and then on an annual basis, the District will train all personnel involved in registration and enrollment, including Bilingual Needs Assessment Teachers, counselors, school-based enrollment clerks, Central Office enrollment coordinators, on its EL identification and placement policies and procedures, including those in Paragraphs 2-8. For all such personnel who are unavailable for the training in August 2021 or who require additional training, the District will ensure that they complete all training required by this paragraph no later than September 30, 2021. At least 20 days prior to conducting any training required by this paragraph (unless the training must be completed on an emergency basis), the District will provide copies of all training materials to the United States for review and approval. If time constraints prevent the District from incorporating all of the United States' feedback into the registration and enrollment training before the District administers it at the beginning of the 2021-2022 school year, the District will revise the training to include the United States' feedback so the updated registration and enrollment training can be administered as needed in subsequent sessions later in the 2021-2022 school year and in subsequent school years. The District will ensure that teachers who completed the draft version of the registration and enrollment training during the 2021-2022 school year receive a supplemental/refresher training or, at least, the final training materials containing the United States' feedback.

### **Provision of EL Services and Access to the Core Curriculum**

10. Unless the EL student's parents make a voluntary and informed decision in writing to opt out<sup>1</sup> of EL services, the District will provide all ELs with at least:

(i) two full periods<sup>2</sup> of ESL per day taught by an ESL-Certified Teacher: one standard ESL period grouped in accordance with Paragraph 12 and one ESL reading period or integrated ESL period in which ESL instruction is aligned with or integrated into the grade-level English/Language Arts class consistent with Paragraph 11; or

(ii) for ELs in Bilingual education, at least one full period of standard ESL per day taught by an ESL-Certified Teacher and daily native-language core content instruction in at least reading and math by a Bilingual-Endorsed Teacher.

11. The District agrees that standard ESL is a core subject for ELs. The District will provide standard ESL to ELs in addition to other core subjects. For EL students who require two daily periods of ESL, the District may offer the ESL reading class as the second daily ESL

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<sup>1</sup> Opt-out ELs remain entitled to all appropriate EL accommodations on classroom and standardized assessments and may not opt out of the annual English Language Proficiency assessment.

<sup>2</sup> A "period" is at least the equivalent time allocated for core content subjects.

period for the 2021-2022 school year. The District's continued use of the ESL reading class after the 2021-2022 school year and during the term of this Agreement, however, is conditioned upon the United States' review of the implementation of the revised ESL curriculum required by Paragraph 24-26, including classroom observations and the United States' approval of the ESL reading class. For EL students in grades 9-12 who require two daily periods of ESL in the 2021-22 school year, the District will integrate the second daily ESL period into the English/Language Arts class to the extent reasonably feasible, given scheduling requirements and available staffing. For EL students in grades 9-12 who require two daily periods of ESL after the 2021-2022 school year and later school years during the term of this Agreement, the District will integrate the second daily ESL period into the English/Language Arts class and will ensure that all such ELs have the same opportunity to earn the required minimum amount of English/Language Arts credits to graduate high school within four years as students who were never ELs. The District will ensure that integrated ESL is (a) taught by an ESL-Certified Teacher who is also certified in English/Language Arts; (b) taught by an ESL-Certified Teacher who is at least appropriately trained in the English/Language Arts standards and curriculum for the relevant grade level(s), is trained on and uses an ESL curriculum aligned with the grade-level English/Language Arts standards, and provides the ELs explicit ESL; or (c) co-taught by an ESL-Certified Teacher and a teacher certified in English/Language Arts who have training on co-teaching ESL (as required by Paragraph 19) and co-planning time together, with the ESL-Certified Teacher providing the ELs explicit ESL. The District will ensure that all integrated ESL classes offered in high school that count toward graduation are targeted to the English/Language Arts standards for one grade level.

12. The District will group ELs for standard ESL, ESL reading, and integrated ESL by (a) their English Language Proficiency level within a single grade or 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. The District will ensure that all ELs at all schools are integrated with their non-EL peers for recess, art, music, gym, lunch, and library and are not unnecessarily segregated from their non-EL peers in other classes, including core content classes, given their English Language Proficiency levels, the nature of their EL services, and their time and progress in such services. The District will integrate ELs with their non-EL peers in school functions, co-curricular activities, and extracurricular activities.

13. The District will monitor the academic progress of each opt-out EL twice per school year by the end of first and third quarters to evaluate the student's ability to participate meaningfully in the regular education program without EL services by having the core content teachers complete a monitoring form. When an opt-out EL is not progressing as expected, the District will, in a language the parents understand, notify the student's parents and recommend ESL, bilingual, and/or other EL services. The District will provide the notice and the opt-out monitoring form using a Qualified Translator for the Major Languages and a Qualified Interpreter for other languages. The District will produce the notices and signed opt-out monitoring forms to the United States upon request.

14. So that teachers know which students need language assistance, all electronic databases and class rosters will note English Language Proficiency level and status (e.g., active, opt-out, or in monitoring), EL services, EL accommodations, and status as Students with Limited or Interrupted Formal Education (e.g., active, former) for all current and former ELs. The District will review class rosters twice per school year by the end of the first and third quarters to

ensure that all ELs receive the EL services required by this Agreement. If the District learns that an EL is not receiving EL services consistent with this Agreement, the District will ensure the EL receives appropriate services within 14 days, consistent with this Agreement.

### **Staffing and Professional Development**

15. The District will ensure that: standard ESL and ESL reading classes are taught by ESL-Certified Teachers; bilingual classes are taught by Bilingual-Endorsed Teachers who are also certified in the content area they teach; and ESL instruction integrated in grade-level English/Language Arts is (a) taught by a teacher who is dually certified in English/Language Arts and ESL; (b) taught by an ESL-Certified teacher who is at least appropriately trained in the English/Language Arts standards and curriculum for the relevant grade level(s), is trained on and uses an ESL curriculum aligned with the grade-level English/Language Arts standards, and provides the ELs explicit ESL; or (c) co-taught by an ESL-Certified Teacher and a teacher certified in English/Language Arts; and (d) all such teachers have completed the training required by Paragraph 19 below. The District may temporarily assign substitute teachers in emergency circumstances (e.g., ESL-Certified teacher is absent and requires a temporary substitute because of illness during the COVID-19 pandemic). The District may also temporarily assign long-term substitute teachers to fill ESL and Bilingual teacher vacancies for at least the first school year in which this Agreement is effective provided that: (a) the District evaluates each of those long-term substitute teachers' credentials and provides support and guidance to any potential candidate for certification as an ESL or bilingual teacher to assist them on a path to obtain such certification; (b) the District provides, and requires all long-term substitute teachers assigned to teach ESL or Bilingual classes to complete, continuous, appropriate professional development on ESL or Bilingual education throughout the duration of their service as long-term substitute teachers; and (c) the District provides all long-term substitute teachers assigned to teach ESL or Bilingual classes with consistent and documented mentoring—paired with an experienced Bilingual-Endorsed Teacher or ESL-Certified Teacher—through the District's teacher mentoring program and with the goal of ultimately hiring the substitute as a full-time teacher upon completion of the ESL or Bilingual teacher certification/endorsement requirements.

16. The District will actively recruit Bilingual-Endorsed Teachers and ESL-Certified Teachers to ensure sufficient staffing to serve all of its EL students and for relevant teaching (including long-term substitute) positions. The District will develop a comprehensive plan to recruit and retain ESL-Certified Teachers and Bilingual-Endorsed Teachers and submit that plan for the United States' review and approval. The District has provided the United States with a draft list of recruitment strategies and, based upon the feedback the United States provided, the District will work on revising its draft list into a comprehensive recruitment and retention plan for the United States' review and approval. The District will provide the comprehensive recruitment and retention plan to the United States for review and approval within 60 days after the Agreement's effective date. The District's notices regarding teacher vacancies will express a preference for candidates with the New Jersey ESL and/or bilingual endorsement. District employees responsible for the recruitment, hiring, and retention of (a) teachers for the EL programs and (b) special education teachers of ELs will meet annually to discuss ways to improve the recruitment, hiring, and assignment of applicants who are ESL-Certified or Bilingual-Endorsed and the retention of Bilingual-Endorsed Teachers and ESL-Certified Teachers who already are employed by the District.



17. To secure enough teachers to provide the required ESL and bilingual instruction, the District will continue to encourage its teachers to obtain the New Jersey Bilingual Endorsement and/or ESL Certification, and—for at least the 2021-2022 school year—will offer a \$4,000 incentive bonus to all District staff who obtain an ESL Certification or Bilingual Endorsement while employed by the District and who are assigned to teach ESL or Bilingual education. The District will consider other incentives to encourage teachers hired before and after the Agreement’s effective date to obtain an ESL Certification and/or Bilingual Endorsement (e.g., through financial or other incentives), which it will incorporate into its recruitment and retention plan for Bilingual-Endorsed Teachers and ESL-Certified Teachers. The District will review this plan annually and will update, modify, and improve the plan as needed based on the plan’s efficacy in increasing the number of ESL-Certified Teachers and Bilingual-Endorsed Teachers employed by the District each year.

18. After the District submits the July 1, 2022 annual report required by Paragraph 42 (and each July 1 report thereafter), the District and the United States will review and confer on the efficacy of the District’s hiring and retention of ESL-Certified and Bilingual-Endorsed Teachers for the preceding school year. If the United States determines that the District has not hired and retained enough ESL-Certified or Bilingual-Endorsed teachers to fully serve its EL students, meet the terms of this Agreement, and comply with the EEOA, the District will implement additional remedial measures by the beginning of the next school year, subject to approval by the United States or the amendment of this Agreement by the parties. Such additional remedial measures may include (a) requiring all newly hired elementary and secondary English/Language Arts and other core content teachers to obtain an ESL Certification or Bilingual Endorsement within three years of their hiring date; (b) creating a State-approved internal ESL Certification and Bilingual Endorsement training program within the District; or (c) formally adopting and implementing Sheltered English Instruction as one of the District’s EL program models, including obtaining any necessary waivers or approvals from the State, to ensure that all core content teachers receive training on strategies to make subject-area content culturally relevant, accessible to, and comprehensible for ELs. If the United States determines that the District has not hired and retained enough ESL-Certified or Bilingual-Endorsed teachers to fully serve its EL students, meet the terms of this Agreement, and comply with the EEOA, and the parties are unable to agree on additional remedial measures, the enforcement provisions of this Agreement, including Paragraphs 46 and 47, will apply.

19. The District will provide adequate training to all teachers of standard ESL, integrated ESL, and ESL reading on effective strategies to: (a) provide standard ESL; (b) provide ESL reading instruction; (c) integrate ESL into grade-level English/Language Arts instruction; (d) co-teach ESL through English/Language Arts (if co-teaching); and (e) make the content instruction accessible to EL students.<sup>3</sup>

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<sup>3</sup> These strategies will include, among others: teaching to language objectives that help ELs achieve the content objectives; building and activating background knowledge; explicitly teaching academic vocabulary; scaffolding instruction; differentiating instruction for ELs; appropriately grouping ELs by English Language Proficiency level; using supplementary and adapted materials, texts, and visual displays; cooperative learning and group work; offering primary language support; providing comprehensible input and clarification; promoting academic

- A. The District will develop a three-year professional development plan that will provide all ESL teachers (including English/Language Arts teachers who co-teach integrated ESL) with at least a full-day<sup>4</sup> in-person training annually on such strategies and at least three hours of in-classroom support on using those strategies. The District may provide one of the three hours of in-classroom support in a group setting (e.g., within grade-level or subject-level meetings, professional learning communities, common planning time for teachers). The District will ensure that the instructor(s) of the in-person training (or ESL-Certified teacher(s) with at least three years of experience using such strategies effectively with ELs) provides the in-classroom support. This support will include co-planning content lessons for ELs with teachers-in-training that integrate ESL across the four language domains and use the ESL curriculum required by Paragraph 24 below, conducting classroom observations, and sharing constructive feedback to teachers on observed lessons.
- B. The District’s training will give teachers practical strategies appropriate for planning, delivering, and adapting content for ELs within the context of standards-based lesson planning, instruction, and assessment. The training will provide teachers with strong modeling of such strategies and sufficient opportunities to practice them and receive constructive feedback on their use of such strategies. The District will differentiate the training sessions to meet the needs of teacher participants (e.g., training on teaching reading and writing strategies to EL students may be differentiated for elementary and secondary teachers because the former usually have literacy training while the latter generally do not).
- C. The District will provide its training plan and an outline of its training materials to implement the first year of the plan to the United States for review and approval at least 60 days before the training session for the 2021-2022 school year. The United States will provide feedback to the District within 30 days of receiving the plan. The parties will work cooperatively to produce a professional development plan and training materials that the United States approves. The District will submit all training materials to implement the remaining requirements of the plan at least 30 days before the training session at which those materials are to be used.

20. The District will ensure that all teachers who provide standard ESL or integrated ESL instruction are “on track” each year to complete all of the training in Paragraph 19 within three years. “On track” means that these teachers will complete at least seven hours of training on effective ESL and other EL teaching strategies and three hours of in-classroom support on using those strategies per year.

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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 ELs’ language use and demonstration of content knowledge.

<sup>4</sup> A “full day” is approximately 6 hours and 40 minutes.

21. In addition to the training in Paragraph 19, all teachers of Students with Limited or Interrupted Formal Education will complete a one-day training on meeting the specific language development needs of such students by September 30, 2021. These teachers will complete an additional half-day of training on teaching Students with Limited or Interrupted Formal Education by December 31, 2021. For the trainings provided during the 2021-2022 school year, the District will provide its full-day and half-day<sup>5</sup> training materials to the United States for review and approval within 14 days of the training date. The United States will provide feedback to the District as soon as possible after receiving the full-day and half-day training materials. If time constraints prevent the District from incorporating all of the United States' feedback into the full-day or half-day training before the District administers it at the beginning of the 2021-2022 school year, the District will revise the training to include the United States' feedback so the updated training can be administered as needed in subsequent sessions later in the 2021-2022 school year and in subsequent school years. The District will ensure that teachers who completed the draft version of the training during the 2021-2022 school year receive a supplemental/refresher training or, at least, the final training materials containing the United States' feedback. Each school year, the District will provide this day and a half of training for new teachers of Students with Limited or Interrupted Formal Education who have not completed the training.

22. The District will develop one or more classroom teacher feedback guidance tools that principals, other administrators, and instructional coaches will use in all schools to provide feedback on teachers' implementation of standard ESL, ESL reading, integrated ESL/English/Language Arts, bilingual instruction, and teaching strategies for Students with Limited or Interrupted Formal Education. Principals and other administrators who conduct classroom observations of teachers of ELs as part of the formal teacher evaluation process will use evaluation or observation tools that look for appropriate and effective use of ESL strategies and bilingual instruction. Within 90 days of the Agreement's effective date, the District will provide its proposed classroom walkthrough teacher feedback guidance tool to the United States for review and approval, and the United States will then provide its feedback to the District within 60 days. Within 45 days of the United States' approval of the tool, the District will train its principals, other administrators, and instructional coaches on using the tool.

23. The District will provide principals, instructional coaches, and any other administrators who evaluate or provide guidance to teachers of EL students with annual training on: their responsibilities under this Agreement; how to identify and support effective ESL, bilingual instruction, and teaching strategies for Students with Limited or Interrupted Formal Education; and how to use the classroom guidance tool in Paragraph 22 to provide constructive feedback to teachers during and/or after classroom walkthroughs. The District will provide its administrator training to the United States for review and approval within 90 days of the Agreement's effective date and then each year by October 1. The United States will provide its feedback to the District within 60 days.

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<sup>5</sup> A "half day" is approximately 3 hours and 20 minutes.

## **Curriculum**

24. The District will develop or adopt grade-appropriate ESL curricula with a scope and sequence for grades K-12 for all standard ESL, integrated ESL, and ESL reading classes. These curricula will be implemented as early as possible in the 2021-2022 school year and will address the needs of secondary Students with Limited or Interrupted Formal Education either through components of a comprehensive ESL curriculum specific to Students with Limited or Interrupted Formal Education or through separate ESL curricula designed for secondary Students with Limited or Interrupted Formal Education.

- A. The District will submit its proposed ESL curricula, including appropriate scope and sequence, for grades K-8 to the United States for review and approval by August 10, 2021 and for grades 9-12 by August 31, 2021. The proposed curricula will consider and address the needs of Students with Limited or Interrupted Formal Education.

25. The United States will provide its feedback on the proposed curriculum for grades K-8 to the District as soon as possible, no later than September 10, 2021, and will provide its feedback on the proposed curriculum for grades 9-12 as soon as possible, no later than 30 days after the United States receives the proposed ESL curriculum for grades 9-12. The District shall timely address such feedback and wait for the United States' response before seeking Board approval of the proposed ESL curricula. Once the United States approves the ESL curricula for certain grades or EL students, the District will train the ESL teachers on how to use the curriculum within 30 days and begin implementing it in the relevant ESL classes within 30 days.

26. During the 2021-2022 school year and thereafter with reasonable advance notice to the District, the United States and its consultant will conduct observations of elementary, middle, and high school standard ESL, integrated ESL, and ESL reading classes to evaluate the District's provision of these classes and its implementation of the new ESL curricula in these ESL classes be they virtual or in person. The United States anticipates conducting such class observations semiannually for at least the first two years of implementation.

## **EL Access to Special Services**

27. All provisions of this Agreement apply equally to ELs with disabilities. No EL with a disability will be denied ESL or bilingual instruction solely because of the nature or severity of the student's disability; nor will that student be denied special education services because of that student's EL status.<sup>6</sup> The District will notify parents of ELs with disabilities in writing in a language they understand that their child is entitled to both bilingual and/or ESL instruction and special education services.

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<sup>6</sup> The District will provide bilingual and/or ESL services, as described in Paragraph 10, unless it receives a valid waiver from parents 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 parents must be informed in writing and in person in a language they understand, using Qualified Interpreters and Qualified Translators.

28. The District will train its special education, Bilingual-Endorsed, and ESL-Certified Teachers who work with EL students with disabilities on how to provide services to ELs 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, Bilingual-Endorsed, and ESL-Certified Teachers to discuss ESL/bilingual services and procedures for timely identifying and serving ELs with disabilities. 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 ELs.

29. The District will ensure that all Individualized Education Program (“IEP”) teams consider the language needs of all EL students with a disability as such needs relate to their IEPs. The District will inform all special education staff that IEP and Section 504 team meetings involving eligibility determinations, determining or changing services, and reevaluations for each EL student with a disability must include a Bilingual-Endorsed and/or ESL-Certified Teacher who: (a) is knowledgeable about EL needs and services and relevant considerations related to ELs’ language; (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 Bilingual-Endorsed and/or ESL-Endorsed Teacher if they cannot attend the meeting. If, prior to any IEP or Section 504 team meeting, the included Bilingual-Endorsed and/or ESL-Certified Teacher is not already knowledgeable about the student, the District will inform the teacher how to access and review the student’s files prior to the IEP or Section 504 meeting.

### **Communications**

30. To identify LEP parents who need language assistance, the District will ask parents to indicate on the home language survey whether they need school- and district-level communications in a language other than English through interpreters and translations. The District will make this information about LEP parents’ language needs readily accessible to administrators and teachers through the student information system. The District will train its employees to review this information before scheduling meetings with parents and sending written communications to parents. During this training, the District will explain how to access Qualified Interpreters, including how to access the District’s telephone-based interpretation vendor, and accurate translations of essential information into the District’s Major Languages from Qualified Translators. The District also will add a statement (accurately translated into the eight most common languages of LEP parents in the District) to its registration packet, its online enrollment website, the homepage of the District, and school websites about the availability of interpretation in multiple languages and how to request an interpreter or a translation. The District will prominently display a copy of this translated statement—providing notice in the eight most common languages of LEP parents—in the front office of each of its schools and in any other public location where parents enroll or register students in the District’s schools.

31. The District agrees to give LEP parents access to school-related information provided to other parents as follows:

A. Notices or documents containing essential information<sup>7</sup> that are distributed at the District or school level will be accurately translated by Qualified Translators into the District's Major Languages and distributed to parents speaking those languages; and speakers of languages other than the Major Languages will be provided, in a timely manner, written translations or interpretation of the documents in a language they understand either upon request or if the need for such translation becomes apparent to the District.<sup>8</sup>

B. Oral communications of essential information will be provided in a language the parent understands by means of a Qualified Interpreter without undue delay. The District will provide oral interpretation or accurate written translation of other school-related information by a Qualified Interpreter or Qualified Translator upon receiving reasonable, specific requests for such information from LEP parents.

32. All District or school-provided interpreters and translators will be Qualified Interpreters and Qualified Translators. Except in an emergency, the District will not use students, family or friends of LEP parents (who are not Qualified Interpreters or Translators), or Google Translate for interpretation of District- or school-generated documents or for any other translation or interpreter services. If there is an emergency and no Qualified Interpreter or Qualified Translator is available, the District will follow up with the parent in a timely manner to communicate the information that was interpreted on an emergency basis through a Qualified Interpreter or accurate translation produced by a Qualified Translator. If instructional staff are providing Qualified Translator or Qualified Interpreter services, the District will ensure that such duties do not interfere with the staff member's instructional and monitoring duties with respect to ELs and former ELs.

33. The District's Office of Bilingual Education will develop written materials for parents that provide clear, accurate, and current information about each of its EL programs, including, but not limited to: (a) the different instructional approaches for each EL program; (b) the amount of daily bilingual and/or ESL instruction provided; (c) which schools offer each type of EL program, including identifying the languages served by each bilingual EL program at each school; and (d) whether classes in the EL program count as core credits or electives toward graduation requirements. The District will accurately translate these materials into the Major Languages and will make them available to all parents of EL students when the school match

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<sup>7</sup> "Essential information" includes, but is not limited to: (a) report cards and other academic progress reports; (b) documents concerning academic options and planning; (c) documents concerning enrollment or registration; (d) documents concerning screening procedures requesting a student's language background, a parent's preferred language of communication, and the process for refusing all or only specific EL services; (e) 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-curriculars activities requiring an application, parent-teacher conferences, open houses); (g) special education documents and notices, including IEPs, Behavior Intervention Plans, and Functional Behavioral Assessments, parental rights in special education (PRISE); (h) information about student discipline (e.g., suspension notices to parents); (i) parent handbooks; (j) information related to public health and safety; and (k) any other written information describing rights/responsibilities of parents or students and benefits/services available to parents and students.

<sup>8</sup> The District will extend this translation obligation to essential information on the District's websites, including its online enrollment platform.

application period opens or—for the parents of ELs who do not participate in school match—prior to enrollment. The District will offer a Qualified Interpreter to explain items (a)-(d) above to LEP parents of other languages. If the District continues to use its online School Finder tool and/or Guidebook to facilitate LEP parents’ school choice and EL program selection, the District will ensure that the information accurately translated into the Major Languages described in items (a)-(d) are included in School Finder and the Guidebook.

34. To ensure that all schools have access to already translated information, the District will provide central office and school-based employees with electronic access to an accurate and current inventory of translated District-level and school-specific documents, as well as instructions for requesting translations of additional documents. The District will continue to expand the inventory to include translations of all District-level and school-level essential information in the Major Languages. To assist all schools in communicating with LEP parents, the District will provide principals with an annually updated list of the names, languages, and contact information for all District employees, contractors, and others who are Qualified Translators and Qualified Interpreters. The principals will maintain the list in a central location within their schools and will ensure school staff are informed on how to access the list. The policies and procedures regarding access to Qualified Translators and Qualified Interpreters will be included in the District’s annual training for administrators and teachers. The District will also ensure that school clerks and any other District employees responsible for communicating with LEP parents regarding EL students’ school selection, enrollment, and EL services have direct access to and receive appropriate training concerning the use of the District’s telephone-based interpretation vendor.<sup>9</sup>

### **Program Monitoring and Evaluation**

35. The District will monitor the EL services and English Language Proficiency progress of current ELs and the academic performance of current and former ELs through its electronic student information system(s). To facilitate its monitoring of current and former ELs, the District will maintain the following information electronically or 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’s initial and annual English Language Proficiency assessment levels in all domains; and the EL’s specific ESL services (e.g., Full-Time Transitional Bilingual Spanish with a daily period of standard ESL). 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; standardized test scores; retention, drop out, and graduation data; whether the student is a long-term EL (i.e., identified as EL for six years or more), an opt-out EL, a former EL, a newcomer EL, or a current or former Student with Limited or Interrupted Formal Education; the year that the student was designated as an EL; school and EL program in which the EL student participated (e.g., Full-Time Transitional Bilingual, Part-Time Transitional

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<sup>9</sup> The District will post hyperlinks prominently on the Legal Findings page of its website to versions of the Agreement in English and the Major Languages, including any amendments, during the term of this Agreement. The District will ensure that the Agreement and any amendments are available in hard copy in English and the Major Languages and are accessible to LEP parents at all bilingual parent advisory committee meetings while the Agreement is in effect. The United States will provide translations of the Agreement and any amendments to the District in the Major Languages.

Bilingual, and High Intensity ESL); whether the student has a disability (i.e., 504 Plan/IEP); and the type(s) of disability (e.g., intellectual disability).

36. Twice per school year by the end of first and third quarters, the District will review the following data for each EL to ensure that each receives the EL services required by this Agreement: English Language Proficiency levels overall and in the four language domains; EL program (e.g., High Intensity ESL); the amount of EL services (e.g., one full period of standard ESL per day, one full period of integrated ESL in English/Language Arts per day); if the EL is a Student with Limited or Interrupted Formal Education; if the EL has a disability (or has been referred for a special education evaluation, if applicable); and if the EL opted out of or exited the EL programs.

37. The District will use valid and reliable criteria for exiting ELs 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 English Language Proficiency test 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 an ESL-Certified Teacher or Bilingual-Endorsed Teacher, 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 and offer EL services and provide the student with the services that the parents accept. 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 Office of Bilingual Education.

38. By June 30, 2021, the District will complete a review of all students in the District to identify every EL student who (a) currently attends school in the District, and (b) exited from the EL program without meeting the state-mandated exit criteria on a valid and reliable assessment of English Language Proficiency.<sup>10</sup> For any student whose records indicate that the District exited the student from the EL program without meeting these exit criteria, by September 30, 2021 the District will administer the WIDA Measure of Developing English Language ("WIDA MODEL"), evaluating all four language domains to determine whether each student is still an EL.<sup>11</sup> If a student receives an Overall composite level of 4.4 or lower on the WIDA MODEL, the District will classify that student as an EL. For any student identified as an EL under this paragraph, the District will offer services within 20 school days of assessment and will communicate the offer to the parent in a language they understand. By October 30, 2021,

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<sup>10</sup> For purposes of Paragraph 38, the state-mandated exit criteria are an Overall composite level of at least 4.5 on ACCESS 2.0 or 5.0 on ACCESS 1.0. Therefore, the District will retest any exited EL (i) who did not receive an Overall composite level of at least 4.5 on ACCESS 2.0 or 5.0 on ACCESS 1.0, or (ii) for whom the District has no ACCESS 2.0 or 1.0 Overall composite level currently available in its records verifying English Language Proficiency.

<sup>11</sup> The District will ensure that all staff who administer the WIDA MODEL successfully complete WIDA's training and review the WIDA MODEL Test Administrator Manual before giving their first test.



the District will provide to the United States a list of those students, including the date each student was assessed, the resulting assessment scores (domain and composite), each student's EL status, the type and amount of services offered to the student, the EL services the student/parent chose and is receiving, and any change in school required to receive EL services (identifying the former and current schools).

39. The District will monitor all schools for compliance with this Agreement. To that end, the District will have the Office of Bilingual Education develop and implement school-level audit procedures to evaluate the quality and effectiveness of the EL programs at each school and District-wide, based on students' services, students' English Language Proficiency and academic performance, evaluations of teachers of ELs (including standard ESL teachers, ESL reading teachers, integrated ESL teachers, and teachers of ELs who provide bilingual core content instruction), and staffing and resources allocations. At each school, an administrator will monitor the data required by Paragraph 36 to ensure that each student receives the appropriate amount and type of services and progresses academically.

40. The District's Deputy Superintendent—who has access to sufficient resources within the District and has supervisory authority over the District's principals, schools, and relevant Departments—will be principally responsible for compliance with this Agreement by the District and its schools. All communications to the District regarding such compliance shall be directed to the Deputy Superintendent with a copy to General Counsel. If the Deputy Superintendent position is eliminated or responsibility for compliance with this Agreement is assigned to a different District official—who must have access to sufficient resources within the District and have supervisory authority over the District's principals, schools, and relevant Departments—the District will notify counsel for the United States within 14 days of any such change.

41. The District will evaluate the effectiveness of each of its EL programs 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 its Full-Time Transitional Bilingual, Part-Time Transitional Bilingual, and High Intensity ESL programs at the elementary, middle, and high school levels by disaggregating and monitoring the following data by current, former, and never ELs for each EL program used by the District: standardized test scores, exit rates (excluding never ELs), dropout rates, graduation rates, retention-in-grade rates, English Language Proficiency assessments (excluding never ELs), 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 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. If the parties mutually agree that the data available for the 2020-2021 school year is insufficient for the longitudinal cohort analysis, the District will track a cohort of students who were enrolled in first, fourth, seventh, and tenth grades in the 2021-2022 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

42. In addition to any reporting requirements provided above, the District will provide to the United States annual compliance reports in electronic format. The District will provide an initial report of the information in Paragraph 42.A-B each year by October 31. The District will provide a full report of the information in Paragraph 42.A-F each year by July 1. 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.<sup>12</sup>

### *A. Identification and Placement of EL Students*

The number of students by grade level and language background (i.e., primary or home language indicated on the home language survey) (a) whose home language survey indicated a language other than English is spoken at home or by the student; (b) whose parents requested translation; (c) whose parents requested interpretation; (d) whose English Language Proficiency was tested; (e) who were identified as EL based on the English Language Proficiency test; (f) who were identified as Students with Limited or Interrupted Formal Education; and (g) whose parents opted out of EL services.

### *B. Provision of EL Services and Access to the Core Curriculum*

1. For each individual EL: student ID number; school; grade level; WIDA Overall English Language Proficiency level; language background; opt out (Y or N); number of years identified as EL; long-term EL (Y or N); newcomer (Y or N); Student with Limited or Interrupted Formal Education (current, former, never); special education (Y or N); primary disability; gifted and talented (Y or N); type of EL program (e.g., High Intensity ESL, Full-Time Transitional Bilingual, ESL for Students with Limited or Interrupted Formal Education); the amount of standard ESL per day (e.g., 45-minute period); the amount of integrated ESL/English Language Arts per day (e.g., one full period daily); the amount of ESL reading per day (e.g., one full period daily); the amount of bilingual instruction per day (if applicable) (e.g., bilingual math-60 mins. and bilingual reading-60 mins.); name of the standard ESL teacher; if the standard ESL teacher has the ESL certification (Y or N); if the standard ESL teacher is “on track” to complete the training required by Paragraph 19; name of the integrated ESL teacher and, if applicable, name of the Co-Teacher; if the ESL reading teacher has the ESL certification (Y or N); if the ESL reading teacher is “on track” to complete the training required by Paragraph 19; name of the ESL reading teacher and, if applicable, name of

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<sup>12</sup> The District will provide all reports, plans, and other items required by this Agreement electronically to counsel for the United States via email, 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 USAfx or Justice Enterprise File Sharing platforms).

the co-teacher; if the integrated ESL teacher has the ESL certification; if the integrated ESL teacher and co-teacher (if applicable) are “on track” to complete the training required by Paragraph 19 (Y or N); name of bilingual teacher(s); if bilingual teacher(s) has the bilingual endorsement (Y or N); and if the ESL, bilingual, core content, and special education teachers of Students with Limited or Interrupted Formal Education have completed the training required by Paragraph 21 (Y or N).

2. For each school, the number of ELs in total who are enrolled in High Intensity ESL, and
  - a. are not receiving a daily period of standard ESL taught by an ESL-Certified Teacher;
  - b. are not receiving a daily period of integrated ESL in a grade-level English/Language Arts class taught or co-taught by an ESL-Certified Teacher or ESL reading by an ESL-Certified Teacher;
  - c. are not receiving their two daily ESL periods from an ESL-Certified Teacher; and
  - d. are not receiving appropriately grouped standard ESL, ESL reading, or integrated ESL/English/Language Arts under Paragraph 12;
3. For each school, the number of ELs in total who are enrolled in the Part-Time Transitional Bilingual, and
  - a. are not receiving a daily period of standard ESL taught by an ESL-Certified Teacher;
  - b. are not receiving appropriately grouped standard ESL under Paragraph 12;
  - c. are not receiving at least a daily period of native-language reading instruction by a Bilingual-Endorsed Teacher;
  - d. are not receiving at least a daily period of native-language math instruction by a Bilingual-Endorsed Teacher; and
4. For each school, the number of ELs in total who are enrolled in the Full-Time Transitional Bilingual Programs, and
  - a. are not receiving a daily period of standard ESL taught by an ESL-Certified Teacher;
  - b. are not receiving appropriately grouped standard ESL under Paragraph 12;

- c. are not receiving at least a daily period of native-language reading instruction by a Bilingual-Endorsed Teacher;
- d. are not receiving at least a daily period of native-language math instruction by a Bilingual-Endorsed Teacher; and
- e. are not receiving native-language in science or social studies by a Bilingual-Endorsed Teacher.

*C. Staffing and Professional Development.*

1. A report that includes for each school:
  - a. the number of ELs by WIDA English proficiency level and disability status (e.g., 100 total ELs, 25 L1, 25 L2, 25 L3, and 25 L4, and 20 with a disability);
  - b. the number of teachers of ESL<sup>13</sup>; the number of ESL teachers without an ESL certification; the number of teachers of Bilingual education; the number of Bilingual teachers without a Bilingual endorsement; and the number of teachers with dual certifications/endorsements of ESL and Bilingual;
  - c. the number of special education teachers (i) with an ESL certification, (ii) without an ESL certification, (iii) with a Bilingual endorsement, (iv) without a Bilingual endorsement, and (v) with dual certifications/endorsements in Bilingual and ESL; and
  - d. the number of core content teachers (i) with an ESL certification and (ii) without an ESL certification.
2. A report that includes the teachers, by name, subject, school, and whether they are co-teaching ELs, who have started, completed, or are on track to complete the annual professional development required by Paragraph 19.A including the hours of (a) training and (b) in-class support they received.
3. A report that includes the teachers or other employees/contractors by name, title (e.g., bilingual paraprofessional, substitute teacher), subject/grade-level/school (if applicable), and hiring date who are enrolled in a program to obtain an (i) ESL Certification, (ii) Bilingual Endorsement, (iii) dual certification/endorsement in ESL/Bilingual, (iv) or certificate of eligibility with intent of obtaining a certification/endorsement in ESL/Bilingual under Paragraph 15 and the incentives and recruitment/retention plan required by Paragraphs 16 and 17.

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<sup>13</sup> This does not include English/Language Arts-certified teachers who co-teach ESL with an ESL-Certified Teacher.

4. A report that includes the long-term substitute teachers who teach ESL and Bilingual classes by name, subject, grade-level, school, duration of service as substitute teachers for each ESL/Bilingual class to which they are assigned for that school year, and whether they
  - a. obtained a certificate of eligibility to teach ESL or Bilingual education;
  - b. are enrolled in a program and are making adequate progress toward full licensure in ESL or Bilingual education;
  - c. completed continuous, appropriate professional development on ESL or Bilingual education throughout the duration of their assignment as a long-term substitute teacher, including the amount of hours of training, training dates, and topic area(s); and
  - d. participated in the District's teacher mentoring program and were paired with an experienced Bilingual-Endorsed Teacher or ESL-Certified Teacher.
5. A report that includes the teachers, by name and subject, who have completed the annual professional development on teaching Students with Limited or Interrupted Formal Education required by Paragraph 21.
6. A principal/administrator/instructional coach training report that includes sign-in sheets, dates, agendas, and training materials for the annual training required by Paragraph 23.
7. The District's professional development plans for the upcoming school year related to the implementation of this Agreement (e.g., ESL training for ESL teachers, principal training), including each training's date, title, target audience, hours, mandatory/voluntary status, and facilitator. Unless a provision in this Agreement provides a different review period, the United States will review these plans and provide the District with any feedback within 60 days.

*D. Access to Special Services.*

1. The number of ELs by school, grade, and native language who (a) were referred to a student support team and the date of the referral; (b) were referred for a special education evaluation, (c) were evaluated in the native language, identifying the language; (d) were identified as having a disability, including each disability identified, and (e) received special education services.
2. A list of the special education, Bilingual, and ESL teachers by school who received the training required by Paragraph 28.
3. A list of qualified bilingual special education evaluators by name, language(s), and specialty area whom the District uses to evaluate ELs suspected of having disabilities.

*E. Parent Communications*

1. A list of translated District-level and school-specific documents by title of the document and the languages in which it was translated, and annually thereafter, an updated list of such documents pursuant to Paragraph 34.
2. Invoices or other documents verifying the District's annual use of any contracted vendors to provide interpretation services at the District-level and school-level, including the name of the vendor/interpreter, date on which interpretation services were provided, the language interpreted, and general subject matter if known (e.g., IEP meeting, parent-teacher meeting, disciplinary hearing, discussing EL program options during enrollment).
3. A list of the names, languages, and contact information for all District employees, contractors, and others who are Qualified Translators and Qualified Interpreters required by Paragraph 34.

*F. Monitoring & Program Evaluation*

1. A list of all former EL students who exited the District's EL programs and are under monitoring. For each student: student ID; school; exit date; number of years in the District's EL programs prior to exit; and English Language Proficiency assessment scores (composite and domain scores).
2. A copy of each District school's monitoring reports developed and provided to the District's Office of Bilingual Education under Paragraphs 36 and 37.
3. The District will complete the longitudinal study described in Paragraph 41 by the end of the 2023-24 school year and provide the results of that study to the United States by September 30, 2024.

4. The District will analyze the efficacy of its ESL reading classes by school for the 2021-2022 school year, including an analysis of whether and by how much ELs progressed or regressed in their Overall composite levels and individual domain scores on the ACCESS 2.0 in 2022 as compared to their 2021 ACCESS 2.0 scores. The District will produce the report summarizing its analysis, and the supporting data, to the United States by September 30, 2022.

43. At least 60 days prior to the anticipated 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 has significant concerns regarding the proposed changes, it will notify the District in writing within 30 days of receiving the District's proposed changes and the District and the United States together will work to resolve the United States' concerns.<sup>14</sup>

### **ENFORCEMENT**

44. The District will, for the duration of this Agreement, 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.

45. 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 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, 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 Equal Educational Opportunities Act and this Agreement. The United States may also evaluate the District's compliance with this Agreement and the Equal Educational Opportunities Act by conducting language access testing at any of the District's schools or any of the District's offices that serve the public.

46. In the event of a breach by the District of this Agreement, the United States may initiate judicial proceedings to enforce the Equal Educational Opportunities Act and the specific

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<sup>14</sup> In the unlikely event that the District is required by law or regulation to implement substantive changes or additions to its EL programs earlier than the timeframe provided in Paragraph 43, the District will notify the United States immediately upon learning of the changes required by law or regulation. Under such rare and exigent circumstances, the United States will notify the District as soon as possible regarding its concerns with the proposed changes, and the District and the United States together will work promptly to resolve the United States' concerns. If the parties cannot resolve their concerns, the enforcement provisions of this Agreement, including Paragraphs 46 and 47, will apply.

commitments and obligations of the District under this Agreement, provided, however, that the parties agree first to negotiate in a good faith effort to resolve the breach for 30 days or until an impasse is reached. 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.

47. This Settlement Agreement will be binding upon the Newark Board of Education and its members in their official capacity, successor members of the Newark Board of Education and successor administrators in their official capacity, and any State entity that assumes authority from the Newark Board of Education to directly control and oversee the District's operations under New Jersey law. The District understands and acknowledges that this Agreement does not relieve the District from its other obligations under the Equal Educational Opportunities Act or other federal laws. The United States, consistent with its responsibility to enforce the Equal Educational Opportunities Act, retains the right to investigate and, where appropriate, initiate judicial proceedings concerning any future alleged violations of the Equal Educational Opportunities Act by the District.

48. The Settlement Agreement will terminate 60 days after the District submits its entire report due on October 31, 2024 per Paragraph 42 provided that the District has demonstrated substantial compliance with all provisions of this Agreement for a period of one year.

49. The burden will be on the District to demonstrate substantial compliance with each of the provisions of this Agreement. Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, will not constitute failure by the District to maintain substantial compliance. At the same time, temporary compliance during a period of sustained non-compliance will not constitute substantial compliance.

50. The parties may, upon mutual written agreement, amend this Settlement Agreement to address changed circumstances and/or to improve the delivery of services to ELs.

51. 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.



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Assistant Attorney General

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 9/1/21

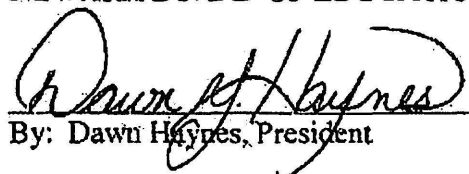
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NEWARK BOARD OF EDUCATION

 8/31/21  
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