

Settlement Agreement

between

The United States of America

and

The School Committee of the City of Somerville, MA

SETTLEMENT AGREEMENT

DEFINITIONS

1. "Somerville School District" and "the District" refer to the School Committee of the City of Somerville, and the schools it operates.
2. "ALCS" refers to the Alternative Language Content Support Program at Somerville High School, a language support program that includes English as a Second Language ("ESL")/English Language Development ("ELD") instruction and content instruction (math, science, and social studies). Teachers who speak Spanish, Portuguese, Haitian Creole, and French provide content instruction in English with ESL/ELD techniques and native language support in the four languages. ALCS classes use English, ESL/ELD, and, if available, native language materials.
3. "ELLS" refers to students who are English Language Learners, Limited English Proficient, or Non-English Proficient and thus require assistance to overcome language barriers that impede their equal participation in the District's instructional programs.
4. "ELD" refers to English Language Development instruction, which the Massachusetts Department of Elementary and Secondary Education ("MADESE") also refers to as ESL instruction. ELD and ESL instruction address listening, speaking, reading and writing standards as contained in the *Massachusetts English Language Proficiency Benchmarks and Outcomes* ("ELPBO").
5. "Unidos Program" refers to the Unidos Two-Way Bilingual Spanish Immersion Program, a voluntary program chosen for students by their parents/guardians. Half the

students in the program are learning English as a second language, and half are learning Spanish as a second language. Content instruction is offered in English and Spanish (math, science, and social studies) to both groups of students. Teachers use sheltered content instructional techniques in order to make lessons understandable.

6. "PIC" refers to the Parent Information Center that the District operates. Language assesses for grades K-8 are scheduled and take place at PIC. Language assessments for grades 9-12 are scheduled and take place at the Somerville High School Welcome Center.
7. "SEIP" refers to the Sheltered English Immersion Program. This a K-12 program for international students and students who speak languages other than English. The educational program includes two components, ESL/ELD and sheltered content instruction (math, science, and social studies) aligned with grade-level standards.
8. "Language services" refers to ESL/ELD, ALCS, SEIP, or Unidos instruction for ELLs.

PURPOSE

9. The Somerville School District, by its undersigned counsel, agrees to the terms of this Settlement Agreement and to comply fully with its provisions in order to address and resolve the issues raised by the United States Department of Justice, Civil Rights Division (hereafter "the United States") regarding the District's legal obligations under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 *et seq.* (hereafter "EEOA").
10. In consideration for the commitments made herein by the Somerville School District,

the United States agrees not to initiate judicial proceedings to enforce the requirements of the EEOA regarding the District's education of ELLs, including the District's efforts to take appropriate steps to overcome language barriers that impede equal participation by ELLs in the District's instructional programs.

11. This Settlement Agreement shall become effective on the date of its entry and shall remain in effect for the remainder of the 2008-09 school year, and the 2009-10 and 2010-11 school years. The date on which counsel for the United States signs the Settlement Agreement shall be the date that shall be considered to be the entry date of this Settlement Agreement. This Settlement Agreement is undertaken as a means of alternative dispute resolution to avoid litigation and for the purposes of judicial and governmental economy. The Settlement Agreement shall not be construed as an admission of liability by the District to any violations of the EEOA.

GENERAL REQUIREMENT

12. As required by the EEOA, the Somerville School District shall take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs. *See* 20 U.S.C. § 1703(f).

SPECIFIC REQUIREMENTS

Registration and Identification of ELLs and Access to Programs

13. The District has drafted and submitted to the United States a procedure that describes the process for registering ELL students at the PIC and the Welcome Center at the Somerville High School. The procedure identifies the forms that are to be used at each location, as well as the assessments that shall be given at each location.

14. The District shall ensure that the Home Language Survey (“HLS”) form, and the Parent/Guardian Notification of Pupil Placement (K-12), are completed during the registration of K-12 students. The District shall make these forms available to parents in the four target languages of English, Spanish, Portuguese, and Creole. For ELL parents or guardians who speak other languages, the District shall provide an oral interpretation of the forms at the time the parents or guardians request this or within a reasonable time of the request. The District shall inform all registration and intake staff at the PIC and the Welcome Center at the Somerville High School that an affirmative response to one of four questions on the HLS triggers an English proficiency language assessment.
15. If the District seeks to revise the content of the two forms referenced in Paragraph 14 (attached hereto as Attachment A) during the term of this Agreement, it shall seek the United States’ consent to the proposed revisions, and the United States shall respond to the District’s request for consent within thirty (30) days by facsimile and shall state whether it has any concerns about the revision. If the United States does not raise questions or concerns within the thirty-day period, the District may use the proposed revised forms.
16. The District shall ensure that all personnel involved in the student registration process in the PIC and the Welcome Center at the Somerville High School, including the ELL counselor and paraprofessional, continue to receive ongoing training regarding: (a) completing the intake/registration forms of students; (b) assessing students’ English proficiency in the four domains of listening, speaking, reading, and writing; (c)

referring appropriate students for special education ("SPED") screening or SPED services if the students have a current Individual Education Plan ("IEP"); (d) informing parents of the District's ELL program options and responding to parental questions regarding assessment procedures; and (e) utilizing translators or interpreters for languages that PIC or Welcome Center staff do not speak fluently.

17. The District shall maintain a database that shall be readily accessible to PIC and Welcome Center staff, as well as administrators at each school in the District. This database shall list the names and contact information for all District employees and non-District employees who are qualified and available to provide translation and interpretation services in the District, including the District's four target languages and, to the extent possible, low incidence languages represented among the District's ELL students and their parents and guardians. The District shall update this database at least once a year with current information. The District shall provide written instructions to PIC and Welcome Center staff and administrators on how to use this database. The District also shall provide written instructions to teachers when hired and on an annual basis in each of the schools concerning how to obtain translation and interpretation services, as needed, via the database through their principals.
18. By October 31, 2008, the District shall complete its review of the records of the 169 identified ELLs who were not receiving ELL services and any other ELLs who are currently not receiving ELL services, and shall commence providing ELL services to these students at their assigned schools, or if necessary, at another school within a reasonable distance of the ELL's residence, unless such students have opted out of

ELL services, are Former Limited English Proficient (“FLEP”) students or have left the District. If the District thereafter learns that *other* ELLs are not receiving ELL services, it shall take reasonable steps to ensure that appropriate ELL services are provided at these ELLs’ assigned schools, or if necessary, at another school within a reasonable distance of the ELL’s residence within a reasonable time period.

19. The District has commenced and will continue ongoing training of staff on how to input and update ELL-related data fields on the District’s student data and tracking systems. The Director of ELL services shall review the tracking data on a monthly basis to ensure that all students identified as eligible for ELL services are receiving appropriate services, unless the ELLs have opted out of or exited the District’s ELL programs.

Instruction of ELLs

20. All ELLs in the District who have not opted out of ELL programs shall receive at least one class period of ELD/ESL per day. The District will ensure that such instruction is provided by a teacher with an ESL or ELL license, or if none is available, then a teacher making reasonable progress towards licensure during the term of this Agreement, or if neither is available, then a teacher who receives training from the District regarding working with ELL students.
21. The District shall provide to the extent practicable: (a) all ELLs who are at the beginning and early intermediate English proficiency levels with ELD/ESL instruction for at least 2.5 hours per day, within the current block schedule for grades 1-12 and (b) all ELLs who are at the intermediate English proficiency level with ELD/ESL

instruction for at least 1 to 2 hours per day, within the current block schedule for grades 1-12. The District will ensure that such instruction is provided by a teacher with an ESL or ELL license, or if none is available, then a teacher making reasonable progress towards licensure during the term of this Agreement, or if neither is available, then a teacher who receives training regarding working with ELL students.

22. For ELLs at the transitioning English proficiency level, the District shall to the extent practicable: (a) assign these ELLs to a teacher qualified to teach ELLs, and (b) provide additional opportunities for small group instruction and learning during the school day, after school, and during the summer.

23. The District shall develop ESL/ELD curricula for grades 6-12 for the four English proficiency levels to be implemented for the remainder of the 2008-09 school year, and shall submit the proposed curricula to the United States by October 31, 2008. The ESL/ELD curricula shall conform with the Massachusetts English Proficiency Benchmarks and Outcomes ("ELPBO"). If the United States has any questions or concerns about the proposed curricula, it must raise them within forty-five (45) days, and the District shall respond to these questions or concerns within forty-five (45) days. If the United States does not raise questions or concerns within the initial forty-five (45) days or within forty-five (45) days following the District's response, the curricula shall become final.

24. The District shall provide training for all ESL/ELD teachers on how to implement the District's ESL/ELD curricula during 2008-09 school year. Training shall be provided to new ESL/ELD teachers within thirty (30) days of their first day of teaching and

whenever possible before the start of the school year. After receiving the initial training, all ESL/ELD teachers shall receive refresher training at least once a year.

Such training will be offered to aides on a space-available basis.

25. The District shall increase opportunities for horizontal and vertical articulation among ESL/ELD, bilingual, and general education teachers at the Somerville High School. Toward that end, the District shall ensure meaningful opportunities for horizontal and vertical articulation among all of its teachers at grade-level, department-level, and faculty-level meetings, as well as at staff development sessions.
26. The District shall ensure that ELLs are integrated, to the extent practicable, with general education students in school functions, co-curricular activities, and extracurricular activities. The District shall ensure that all ELLs at all schools are integrated with non-ELL students for recess, art, music, gym, lunch, and library.
27. The District shall implement an Academic Literacy Course at Somerville High School during the 2008-2009 school year that shall be designed for ELLs who have completed the ESL sequence of courses but who have not reached English proficiency exit criteria. This course shall continue ELD in the four domains of listening, speaking, reading, and writing and shall focus on academic literacy skills to be applied in all content areas.
28. ELLs in the SEIP program shall be enrolled in sheltered content classes (math, science, and social studies) where instruction is primarily in English, and teachers use sheltered content instructional techniques (for example, grouping students by language proficiency level, adapted materials and texts, visual displays, cooperative learning and

group work, primary language support, and clarification) to make lessons understandable. The District shall ensure that in SEIP sheltered content classes: (a) speech is appropriate for the ELLs' English proficiency level(s); (b) supplementary materials support the content objectives and contextualize learning; (c) vocabulary relevant to the subject matter is taught; (d) content that is adapted, including texts, assignments, assessments, and presentation of content in all modalities, is within the ELLs' English proficiency level(s); (e) ELLs are afforded regular opportunities to practice and apply new language and content knowledge in English; and (f) academic tasks are clearly and explicitly explained to ELLs.

29. For ELLs in the ALCS program, the District shall provide language support in content classes and, to the extent practicable, teachers shall use native language instruction, native language clarification of English language instruction, and native language and English language materials.

INSTRUCTIONAL STAFF

30. The District shall ensure that teachers of ELLs are adequately trained to provide quality language services to ELLs. Toward this end, the District shall continue making progress in providing MADESE ELL Endorsement Training in Categories 1 through 4 for SEIP, ALCS, Unidos, general education, and special education teachers.

Furthermore, the District shall monitor the progress that these teachers are making towards appropriate category training and licensure. The District shall ensure that teachers of ESL and ELD classes: (a) have an ESL or ELL license, or if this is not possible, (b) are making consistent progress toward obtaining an ESL or ELL license

within a reasonable period of time.

31. The Director of ELL Programs shall continue to meet with employees who supervise the SEIP content areas at the high school level to ensure that these employees are appropriately trained regarding how to supervise SEIP classes and evaluate SEIP teachers' performance. The District shall ensure that employees who evaluate teachers of ESL/ELD, SEIP, ALCS, and Unidos classes are trained regarding sheltered techniques, native language instruction, or ESL/ELD instruction to perform a meaningful evaluation.
32. By November 15, 2008 the District shall submit its Professional Development Plan relative to the training of staff (including special education staff) regarding the provision of ELL services for the United States' review. Thereafter, the District shall submit such information in the annual reports required herein. Such plans shall include the category 1-4 training being offered each school year, including all mandatory and voluntary training. The District shall describe how it is prioritizing the training of teachers. The plans shall ensure that all teachers shall receive some type of training relating to working with current and recently exited ELLs. The District shall ensure that teachers of ESL/ELD, SEIP, ALCS, and Unidos classes receive training in how to identify and address any language barriers that may hinder current or recently exited ELLs from participating in general education classes.

Resource Allocation

33. For high school ELLs who speak Spanish, Creole, French, and Portuguese, the District offers in addition to ELD and SEIP classes some classes with native language

support and/or instruction through the ALCS program. To the extent that such classes involve native language instruction of the core content material, these classes shall have adequate and appropriate native language materials. To the extent that such classes involve core content instruction in English with native language support only (e.g., periodic explanation of terms or concepts in the native language), core materials in English may be used and supplemental native language materials should be used to the extent practicable.

34. The District shall ensure that it has sufficient and appropriate ESL, ELD, SEIP, ALCS and native language Unidos materials for ELLs at all grade and proficiency levels by the entry date of this agreement and by the start of each subsequent school year. The District shall use its best efforts to ensure the provision of sufficient and appropriate native language materials for its native language support classes by the same date and yearly thereafter.

Special Education

35. The District shall provide special education services and language services to all students who are eligible for both such services, provided that the District shall not be required to provide ELL services for SPED students who, on account of their disabilities, are unable to benefit from such services. The decision that the SPED student would not benefit from ELL services shall be made by qualified personnel in Special Education. Subject to the foregoing, the District shall not deny language services to special education students who qualify for language services and shall not deny special education services to students who are ELLs and qualify for special

education services. If a determination is made that that a SPED student is unable to benefit from ELL services the District shall document with specificity the basis for the determination.

36. The District shall ensure that the staff at the PIC and the Welcome Center at Somerville High School expressly inform parents that dually identified SPED ELLs may be eligible for both ELL and SPED services and that parents do not have to choose between services.
37. Consistent with applicable federal law and regulations, all IEPs of ELLs shall consider the language needs of the ELL as such needs relate to the ELL's IEP. SPED service providers will be made aware of and will consider a dually identified SPED ELL's language needs, and ELL service providers will be made aware of and consider a dually identified SPED ELL's special education needs. The SPED ELL's language services will be reflected on the District's database, and the SPED ELL's team shall consult the database and familiarize themselves with such information. In addition, the District shall maintain records of the languages in which SPED assessments and evaluations were conducted for a student; modifications, if any, of standard assessment procedures; the qualifications of the individuals completing the student's SPED assessments; and the impact of language on the interpretation of the data.
38. As of October 31, 2008, the IEP shall include: the student's current Massachusetts English Proficiency Assessment ("MEPA") and Massachusetts Comprehensive Assessment System ("MCAS") test scores.
39. The District shall continue its efforts to recruit and hire SPED teachers and aides who

have ESL, ELL, or bilingual certifications or endorsements or at least fluency in one or more of the languages of the District's SPED ELLs. The District's notices regarding its SPED vacancies shall express an interest in candidates with ESL, ELL, or bilingual credentials and foreign language fluency.

40. The District shall provide Resource ESL to SPED ELLs at the Somerville High School for the remainder of the 2008-09 school year and for the remainder of this Agreement. Resource ESL shall be taught by an ESL or ELL certified teacher, or otherwise qualified as agreed to in Paragraph 30, who shall provide appropriate ELD instruction to dually identified SPED ELLs as well as consultation to SPED staff.

Monitoring Current and Exited ELLs and Evaluating Language Services

41. During the term of this Agreement, the District shall monitor the academic performance of current and recently exited (*i.e.*, exited within the past two years) ELLs. As part of this system, all current ELLs should be identified by their proficiency level on all class rosters and all recently exited students should be identified as Former Limited English Proficient ("FLEP") for two years on all class rosters. The District shall monitor FLEP students twice a year by reviewing their grades, standardized test scores (*e.g.*, MCAS), and progress reports to determine if the student needs any academic support services (*e.g.*, tutoring) or needs to be retested for possible reentry into the ELL program. If a FLEP student fails to make academic progress, as measured by grades and assessments, during the six months after being classified as FLEP, and if a school-based team familiar with the student determines that this failure is due to a lack of English proficiency, the student's instructional

programming shall be redesigned and the student shall be classified as LEP.

42. To monitor current ELLs and FLEP students and to evaluate whether their language services are overcoming language barriers, the District shall ensure that its student information system is able to disaggregate the following information by school and ELL program (*i.e.*, SEIP, ALCS, and Unidos): English proficiency assessments (*e.g.*, MEPA), standardized test scores (*e.g.*, MCAS), class grades, retention-in-grade rates, graduation rates, and enrollment in honors, special education, and enrichment programs (*e.g.*, Advanced Placement and gifted classes).
43. To further evaluate its ELL programs, the District also shall analyze the causes of its 12% rate of ELLs opting out of ELL programs and the exit rates of each ELL program.

ANNUAL REPORTING TO THE UNITED STATES

44. During the 2008-09, 2009-10 and 2010-11 school years, the District shall provide to the United States annual reports detailing its efforts to comply with the provisions of this Settlement Agreement. The District shall submit the annual reports outlined herein each year by July 15th provided that the first report shall be due October 31, 2008. If any of the information required for the annual report in a particular school year is available in a document that the District already has prepared to comply with the No Child Left Behind Act (20 U.S.C. § 6301, *et seq.*) or other federal or state statute or regulation, the District may include the document in its annual report and indicate the section of the annual report to which the document applies. The annual reports shall include the following information about the school year preceding each

annual report, unless otherwise specified:

- a. the number of ELLs by school, grade, and native language who received each language service (SEIP, ALCS, Unidos, etc.);
- b. the number of ELLs by school, grade, and native language who (i) did not receive language services and (ii) opted out of language services;
- c. the number of students by school and native language who indicated on the HLS that a language other than English is spoken at home or by the student; the number of any such students who were assessed with the IDEA Language Proficiency Tests ("IPT") or other validated and reliable English proficiency test to determine their level of English proficiency; and the number of any assessed students who ultimately were identified as ELLs;
- d. copies of all forms related to student registration and ELL eligibility that are provided to students, parents, and/or the general public, as well as a list of other languages in which these forms are available;
- e. a list of the staff who conduct registration, ELL screenings, English proficiency assessments, and placement in ELL programs at the PIC, the Welcome Center, and any other registration site, including the staff's names and foreign languages that they speak fluently;
- f. a list of all ESL, ELD, SEIP, ALCS, and two-way instruction teachers by school, grade, language(s) that they speak, certification(s), and years of experience;
- g. a list of any ELL-related training provided to District personnel, including a description of the content of each training, the date(s) of the training, and the number and

type of District personnel who attended the training (*e.g.*, 20 SEIP sheltered content teachers in the District, 5 ALCS teachers at Somerville High School, and 15 general education teachers at Capuano);

h. the class rosters of the ALCS, SEIP, Resource ESL, and Academic Literacy classes at Somerville High School, including the English proficiency levels and native languages of the enrolled ELLs;

i. the number of students by school, grade, native language, and language service who were exited from the District's ELL program by: (i) meeting exit criteria, (ii) a discretionary exit based on teachers' recommendations, or (iii) by a parent's request for an early exit;

j. the number of FLEP students by school, grade, native language, and language service who were re-entered into the District's ELL program;

k. for Somerville High School, a summary of the opportunities for horizontal and vertical articulation among ESL/ELD, SEIP, ALCS, and general education teachers;

l. for each school and grade, a list of the occasions per week in which ELLs are not integrated with regular education students in art, music, gym, library, lunch, and recess;

m. for each school, the number of special education teachers and aides with ESL/ELD or bilingual training and/or certification(s), noting the type of training and/or certification(s), or with foreign language fluency, noting the foreign language;

n. the number of ELLs by grade and native language who: (i) were referred for special education services, (ii) were found eligible for such services; and (iii) received such services, noting the nature and duration of such services (*e.g.*, bilingual special education

teacher provides special education services and one period of ESL per day or special education teacher and a bilingual aide provide special education services and one period of ESL per day);

o. a description of the District's system for monitoring FLEP students over a two-year period and current ELLs, specifying the data that are monitored and including a copy of the FLEP monitoring forms for each FLEP student that exited within the past two years;

p. a description of any material changes that the District proposes to make to its: procedures for registering students, assessing ELLs, and assigning ELLs to classes; providing translator and interpreter services to ELL parents or guardians; ESL/ELD, SEIP, or bilingual curricula; ELL-related training of ELL, special education, or regular education teachers; and system for monitoring FLEP students over a two-year period and current ELLs;

q. a description of the District's progress in obtaining appropriate native language and other materials for its ELL students, including a list of newly obtained ELL-related materials; and

r. any other information that the District believes will be helpful.

ENFORCEMENT

45. The District shall maintain records of all information pertinent to compliance with the terms of this Settlement Agreement and shall provide such information to the United States upon request during the term of this agreement.

46. The District acknowledges and understands that, in the event of a breach by the

District of this Settlement Agreement, the United States may initiate judicial proceedings to enforce the EEOA and the specific terms, commitments and obligations of the District under this Settlement Agreement.

47. The District acknowledges and understands that 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.

48. The following signatures indicate the consent of the parties to the terms of this Settlement Agreement. The date on which counsel for the United States signs the Settlement Agreement shall be the date that shall be considered to be the entry date of this Settlement Agreement.

49. This Settlement Agreement shall be effective upon its date entry and shall remain in effect for the remainder of the 2008-09 school year, and the 2009-10 and 2010-11 school years.

For the United States:

GRACE CHUNG BECKER

Acting Assistant Attorney General

 11/25/08

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END OF SIGNATURES