

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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KINNEY KINMON LAU, et al.,	)	
	)	
Plaintiffs,	)	No. C70-0627 CW
	)	
v.	)	JUDGE CLAUDIA WILKEN
	)	
SAN FRANCISCO UNIFIED SCHOOL	)	
DISTRICT,	)	
	)	
Defendants.	)	
_____	)	
UNITED STATES OF AMERICA,	)	
	)	
Intervenors.	)	
	)	
_____	)	

**MODIFIED CONSENT DECREE**

The Court has reviewed the provisions of this Modified Consent Decree (“MCD”) and finds them to be fair, just, and reasonable; the product of good-faith arms-length negotiations; and consistent with the objectives of Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.* (“Title VI”), which gave rise to the claims in this historic case. Accordingly, the Court approves the Parties’ stipulated application to replace the 2008 court-ordered Master Plan with this MCD. As explained in that application, the Parties anticipate that the Defendant San Francisco Unified School District’s full and good faith compliance with this MCD should permit the dismissal of this case in the fall of 2018.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the provisions of this MCD become the Order of this Court. This MCD will supersede all prior orders, and this

Court will retain jurisdiction over this case until it terminates as set forth in Paragraph 109 or until further order of the Court.

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## **I. INTRODUCTION**

1. The MCD reflects the Parties' shared goal that all students, including English Learners ("ELs"), in the San Francisco Unified School District ("SFUSD" or "District") have an equal opportunity to access its curriculum, programs, services, and activities, and to learn in nondiscriminatory environments that are safe, supportive, and accessible to students of all language backgrounds.

## **II. PROCEDURAL HISTORY**

2. Following a determination on January 21, 1974, by the U.S. Supreme Court that the District was in violation of Title VI of the Civil Rights Act of 1964, the Private Plaintiffs (Kinney Kinmon Lau, et al.), Plaintiff-Intervenor the United States (together, the "Plaintiffs"), and the District (collectively, the "Parties") stipulated to the terms of the original Consent Decree, which was filed on October 22, 1976, and approved by this Court.

3. On September 11, 2008, this Court approved the Master Plan for Multilingual Education ("Master Plan" or "Plan"), which superseded the original Consent Decree (to the extent of any inconsistent language). Beginning in the 2008-2009 school year, the Parties engaged in extensive communications regarding the District's implementation of the Plan. In March and May 2010, May 2011, May 2012, and November 2014, the Plaintiffs conducted site visits (which included having the District gather and provide hundreds of documents in advance of certain visits): touring a selection of District schools with an EL education expert, interviewing principals and District administrators, and conducting community meetings and private interviews with parents and students regarding the District's policies and practices for serving ELs and their families. During this time, the District also filed comprehensive Annual Reports with the Court each September 15.

4. Since the adoption of the 2008 Plan, SFUSD has made progress in implementing the Plan's requirements. To the extent the Parties dispute the degree of compliance in several areas, they have chosen to resolve these disputes through this MCD rather than litigate those issues.

5. Since 2009, based on information from the District's Annual Reports, the site visits, and communications from community members, the Plaintiffs have consistently communicated their concerns about specific aspects of the District's compliance with the Plan through letters, emails, teleconferences, and meetings. The Parties acknowledge that although the District has consistently engaged with the Plaintiffs to address several key concerns and has taken steps to improve its services and compliance, the District is not yet in compliance with the 2008 Plan.

6. The Parties have conferred in good faith and negotiated the terms of this MCD, which supersedes the September 11, 2008 Order, and aims to bring the District into compliance with Title VI within three years in the areas covered by this MCD.

### **III. DEFINITIONS**

7. "A Developmental English Proficiency Test" and "ADEPT" refer to an oral language assessment instrument aligned with the California English Language Development Test ("CELDT") that can be used with ELs across grade levels, from kindergarten through eighth grade.

8. "Beginning Teacher Support and Assessment" and "BTSA" refer to a state-funded induction program, co-sponsored by the California Department of Education ("CDE") and the California Commission on Teacher Credentialing ("CCTC"), designed to support the

professional development of newly-credentialed beginning teachers and fulfill the requirements for the California Clear Multiple and Single Subjects Credentials.

9. “Bilingual Community Council” and “BCC” refer to a group of up to 14 community members appointed by the District’s Board of Education (“Board”) who serve as an advisory body to the Board and assist the District in monitoring the Lau Plan and this MCD, which can include site visits at SFUSD schools, reports to the Board on the status of programs for ELs, and meeting at least monthly to discuss issues and strategies for serving ELs in the District.

10. “California English Language Development Test” and “CELDT” refer to a state-mandated English language proficiency test that local educational agencies must administer to students in kindergarten through grade twelve whose primary language is not English, and to students previously identified as ELs who have not been reclassified as fluent English proficient (“RFEP”).<sup>1</sup> The CELDT is used to identify students with limited English proficiency, determine their level of English proficiency, and assess these students’ progress in acquiring the skills of listening, speaking, reading, and writing in English.

11. “California High School Exit Examination” and “CAHSEE” refer to the test that all high school students must pass to earn a high school diploma, except where exempted from the test’s requirements under state law or regulation.

12. “California Standards Test” and “CST” refer to a state test that was administered to students prior to the 2014-2015 school year that measured students’ progress toward achieving state academic standards for core content.

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<sup>1</sup> The Parties are aware that the State of California is revising the CELDT and that the state-mandated test may change during the course of this court-ordered MCD. If this happens, the Parties will confer to determine if they can agree that the references to the CELDT in this MCD will be replaced with the new test that the state adopts. The United States reserves all rights on the issue of whether the new test complies with Title VI and the Equal Educational Opportunities Act, 20 U.S.C. 1703 *et seq.* (“EEOA”).

13. “Core Content” refers to language arts, math, science, and social studies.

14. “Court and County Schools” refers to the Civic Center School, Early Morning Study Program, Hilltop Special Services Center, Log Cabin Ranch, and Woodside Learning Center, and any other program at which SFUSD provides education per Cal. Educ. Code § 1000.

15. “Designated English Language Development” and “designated ELD” refer to direct, explicit instruction about the English language that provides a systematic and developmentally appropriate approach to teaching language within the context of academic content from grade-level curriculum. ELD instruction in the District addresses the listening, speaking, reading, and writing standards in the California ELD Standards and corresponds to the academic language and content demands of the Common Core State Standards (“CCSS”).

16. “District English Learner Advisory Committee” and “DELAC” refer to a District-level subcommittee on EL education that advises the Board on programs and services for ELs, including conducting needs assessments on a school-by-school basis, establishing district-wide goals and objectives for ELs, developing plans to ensure compliance with applicable teacher and instructional aide requirements, and reviewing and commenting on the District’s reclassification procedures for ELs.

17. “Educational Placement Center” and “EPC” refer to the office and staff of said office responsible for enrolling all K-12 District students in SFUSD, and for providing guidance to, among others, EL parents/guardians in selecting and applying for District programs for their EL students.

18. “English Learner Advisory Committee” and “ELAC” refer to school-level subcommittees on EL education that advise the principal and school staff on programs and services for ELs and the School Site Council on the development of the Single School Plan for

Student Achievement. The percentage of parents/guardians of ELs on an ELAC must be at least the same as that of ELs in that school.

19. “English Learners” and “ELs” refer to students who have been determined to be Limited English Proficient (“LEP”) or Non-English Proficient and thus require assistance to overcome language barriers that impede their equal and meaningful participation in the District’s instructional programs.

20. “EL Certification” refers to the EL teaching credential based on State requirements<sup>2</sup> to obtain such certification (*e.g.*, CLAD and BCLAD).

21. “EL Services” refers to assistance afforded to ELs for the purpose of teaching the English language or to render substantive educational content accessible, whether in the context of an EL program specifically designed for ELs or in a classroom where ELs and non-ELs are educated.

22. “Equal and meaningful participation” refers to the ability of ELs and reclassified students to participate in and benefit from the general education program in SFUSD in a manner comparable to their never-EL peers.

23. “Essential information” refers to information that the District and its schools provide to parents/guardians that includes, but is not limited to: (a) information about special education matters arising under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et. seq.* (“IDEA”) or Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (“504”) (*e.g.*, IEP or 504 meetings); (b) report cards and other academic progress reports; (c) information about discipline and the disciplinary process; (d) requests for parent/guardian permission for student participation in District/school sponsored programs and activities; (e) promotional materials and announcements distributed to students that contain information about school and District

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<sup>2</sup>See Footnote 5.



activities for which notice is needed to participate in such activities (e.g., testing, extracurriculars, activities requiring an application, parent-teacher conferences, open houses); (f) parent/guardian handbooks; (g) documents concerning enrollment or registration; (h) documents concerning academic options and planning; (i) documents concerning screening procedures requesting a student's language background, a parent/guardian's preferred language of communication, and the process for refusing all or only specific EL services; (j) information related to public health and safety; and (k) any other written information describing the rights and responsibilities of parents/guardians or students and the benefits and services available to parents/guardians and students.

24. "Free appropriate public education" and "FAPE" refer to the provision of regular or special education and related aids and services that are designed to meet the individual educational needs of students with disabilities as adequately as the needs of students without disabilities are met and that satisfy certain requirements concerning educational setting, evaluation, placement, and procedural safeguards, per 20 U.S.C. § 1400 *et seq.* and 29 U.S.C. § 794.

25. "Gifted and Talented Education" and "GATE" refer to an approach to providing challenging and novel learning opportunities that equitably engage the high potential, talent, and exceptional capacities of students. Students are identified as GATE-eligible between third and twelfth grade, and are assessed for GATE eligibility using multiple measures in a language-accessible manner.

26. "Home Language Survey" and "HLS" refer to a questionnaire that the District will require all parents/guardian(s) to complete to register students new to the District and that will ask the parent/guardian(s) to indicate whether the student's primary or home language is

other than English. The HLS will also survey whether the parent/guardian would like written and/or oral communications from the District and the student's school in a language other than English consistent with the requirements in Paragraphs 87-88.<sup>3</sup>

27. "IEP" refers to an Individualized Education Program, which is defined by federal statute to mean a written statement for each student with a disability that is developed, reviewed, and revised in accordance with the provisions set forth in the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 *et. seq.* ("IDEA").

28. "Initial Fluent English Proficient" and "IFEP" refer to students identified by the HLS as having a primary or home language other than English who test proficient in English on their initial CELDT, and are therefore never identified as ELs.

29. "Integrated English Language Development" and "Integrated ELD" refer to English Language Development that uses both the State's ELD and core content standards to support the linguistic and academic progress of ELs. Integrated ELD is embedded in core content instruction across the instructional day through a menu of options, including: (1) contextualization of information using a variety of strategies to enable ELs to comprehend, use, and learn grade-level content; (2) integration of language and content by creating meaningful contexts and teaching academic language; (3) accessibility and use of grade-level complex text; (4) collaborative interaction by providing multiple opportunities for ELs to make sense of new information and explain their knowledge through productive academic talk; and (5) checks for understanding and explicit feedback. This new approach to ELD instruction supplements designated ELD and will be phased in each year with full implementation required by the 2016-2017 school year.

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<sup>3</sup> The Parties are aware that the State of California is considering changing or replacing the HLS during the course of this court-ordered MCD. If this happens, the Parties will consider and determine whether references to the HLS in this MCD will be replaced with the new document/approach that the state adopts.

30. “Internal Oversight Committee” and “IOC” refer to a group of District leaders, including department heads and other internal stakeholders, that meets regularly to monitor implementation of the MCD.

31. “Language domains” refers to listening, speaking, reading, and writing.

32. “LEP” refers to Limited English Proficient individuals, or individuals who do not speak English as their primary language and who have a limited ability to read, speak, write, or understand English, and may therefore require assistance to communicate or access services.

33. “Long-Term EL” refers to an EL who has been enrolled in U.S. schools for five or more years, but has yet to meet the District’s criteria for reclassification.

34. “Major Languages” refers to English, Spanish, Chinese,<sup>4</sup> Vietnamese, Filipino (Tagalog), and Arabic.

35. “Multilingual Pathways Department” and “MPD” refer to the District-level department responsible for EL educational services.

36. “Naglieri Cognitive Processing Test” refers to a nonverbal test for GATE identification that is often used with ELs.

37. “Newcomer” refers to recently arrived immigrant ELs who have little to no English proficiency. Newcomers may include ELs whose formal education has been interrupted (“SIFE”), and who may have limited literacy in both their native language(s) and English.

38. “Never-EL” refers to a student who has never been an English Learner and who does not require assistance from the District to overcome language barriers in order to equally and meaningfully participate in the District’s instructional programs.

39. “Non-LEP” refers to an individual (*e.g.*, a parent) who is proficient in English.

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<sup>4</sup> “Chinese” refers to written traditional Chinese for the purposes of translation. “Chinese” refers to Cantonese, Mandarin, and Toishanese for the purposes of interpretation.

40. “Paraprofessionals” refers to teacher support staff who assist students in the classroom and who have met local, state, and federal guidelines for their qualifications and/or certifications.

41. “Parent/Guardian” refers to either or both biological or adoptive parents of the student, the student’s legal guardian, or any other person in a parental relationship to the student that has legal and/or educational decision-making authority for the student per Cal. Educ. Code § 56028.

42. “Plaintiffs” refers to Kinney Kinmon Lau, et al., private plaintiffs, and the United States of America, Plaintiff-Intervenor.

43. “Qualified interpreter” refers to someone who is fluent in the language in which he or she is communicating in addition to being fluent in English, has demonstrated ability to employ the mode of interpretation appropriate to the given situation (*e.g.*, employing simultaneous interpretation for hearings or large-group parent/guardian meetings), has demonstrated language ability, and has received professional development in specialized issues such as confidentiality and any applicable technical vocabulary.

44. “Qualified translator” refers to someone who is fluent in writing and reading in the language in which he or she is communicating in addition to being fluent in writing and reading in English, and has received professional development in specialized issues such as confidentiality and any applicable technical vocabulary.

45. “Reclassification” refers to the process whereby an EL is reclassified as a Fluent English Proficient (“RFEP”) student after meeting various linguistic and academic criteria set by the District and State of California, in compliance with federal law.

46. “Reclassified Fluent English Proficient” and “RFEP” refer to a student who is a former EL who has met all requirements to be reclassified from EL to Fluent English Proficient.

47. “San Francisco Unified School District,” “SFUSD,” and “the District” refer to the San Francisco Board of Education and the public schools it operates per Cal. Educ. Code § 35510.

48. “Specially Designed Academic Instruction in English” and “SDAIE” refer to California’s approach for teaching core academic content using the English language to ELs, and is intended to help ELs gain skills in both content and English. The instruction uses strategies designed specifically for ELs so the EL can meaningfully access academic content in the English language. Such instruction is supported by material in their primary language, when available.

49. “Section 504 plan” refers to a plan designed to meet the individual educational needs of a student with a disability under Section 504 of the Rehabilitation Act of 1973, or who are regarded as having such disability.

50. “EL SWD” refers to an EL who is also a student with a disability as defined by federal law, *see* 20 U.S.C. § 1401 and 29 U.S.C. § 794.

51. “Student Success Teams” and “SST” refer to teams constituted for, among other reasons: (a) identifying the student’s individual needs; and (b) proposing placements, interventions, programming or services, including referrals for Section 504 or special education placement.

52. “Synergy” refers to the District-wide electronic student information system used for demographic, academic, and behavioral data, or any similar system by any name used by the District for such demographic, academic, and behavioral data.

53. “Translation and Interpretation Unit” and “TIU” refer to the District office that provides translation and interpretation services to SFUSD families at school sites and at the District level.

#### **IV. IDENTIFICATION AND PLACEMENT OF ENGLISH LEARNERS**

##### **A. Identification of English Learners**

54. Proper identification of ELs is a foundational component for ensuring appropriate placement in EL services and access to the core curriculum and other education services offered by the District. The District will take the following steps to ensure the proper and timely identification of ELs:

a. Utilize the Home Language Survey (“HLS”) to Initially Assess Home Language. The District will continue to enroll all K-12 students at the Educational Placement Center (“EPC”). EPC staff will be responsible for ensuring that all parents/guardians are provided with SFUSD’s HLS upon enrolling their child. If the HLS indicates that a language other than English is spoken in the home, the District will ensure that the student’s English proficiency is assessed as described in Paragraph 55.

b. Inform Parents/Guardians About the EL Identification Process. The EPC and the Multilingual Pathways Department (“MPD”) will provide parents/guardians with information about how student identification and assessment takes place in the District. The EPC and MPD will provide this information through: (i) the SFUSD Enrollment Guide, which the District will provide in the Major Languages; and (ii) in-person communication during the K-12 enrollment process, with qualified interpreters for LEP parents/guardians.

**B. Assessment of English Learners**

55. When the HLS indicates that a language other than English is spoken in the home, the District must use valid and reliable criteria to identify and assess ELs, including administering a valid and reliable assessment of English proficiency in all four language domains.

a. California English Language Development Test (“CELDT”). The District currently uses the CELDT to assess students’ English proficiency levels in all four language domains. The District will notify parents about the CELDT testing process within four days after the first day of school, and will assess students identified by the HLS as having a primary or home language other than English as soon as possible but not later than 15 days after parents are notified, or within 10 days for students enrolling after the second week of school. The District will make reasonable efforts to continue testing potential ELs who were absent during the testing window. The District will, within thirty days of the child’s first day of attendance and in a language the parent/guardian understands, provide parents/guardians in writing with: (i) the results of the assessments, (ii) the child’s EL placement, and (iii) information on the right to refuse that placement.

b. Primary Language Assessments. The District will use a Primary Language Assessment to assess the student’s proficiency in his or her home language when the District determines that such testing is helpful to the effective implementation of the District’s language pathways (*e.g.*, dual language pathways). Once the results of the Primary Language Assessments are available, the District will, in a language the parent/guardian understands: (i) provide parents/guardians with the results of the assessments; (ii) explain the methods of

instruction used in the District's EL pathways; and (iii) explain parents'/guardians' rights to decline to enroll their child in the District's EL pathways. The Enrollment Guide and the District website will provide parents/guardians with a telephone number and email address for the staff person(s) available to provide further assistance in understanding the assessment results and the available EL programs.

### **C. Placement of English Learners**

56. The District will take the following steps to place ELs appropriately in EL services:

a. Appropriately level and place ELs using valid and reliable English Language Proficiency ("ELP") scores. As soon as practicable and no later than 10 business days after the student's ELP scores (currently the CELDT or ADEPT results) are available, the District will ensure that ELs have been properly placed in EL programs, and if not, adjust their placements to appropriately reflect their ELP levels. If a child demonstrates English language proficiency on a valid and reliable ELP assessment, the child will be designated as Initial Fluent English Proficient ("IFEP").

b. Provide guidelines for appropriate placement for secondary students. The District, through the MPD, will provide a set of student placement guidelines for ELs in secondary schools for: (i) appropriate placement in English Language Development ("ELD") courses; (ii) the types of academic course placements appropriate for students at differing English proficiency levels; and (iii) the different "typologies" of ELs (*e.g.*, Newcomers, Long-Term ELs, EL SWDs).

c. Analyze foreign transcripts to effectively place and serve secondary students. The EPC will incorporate analysis of foreign transcripts, when available, into the



initial assessment process of newly arrived students from foreign schooling systems. The EPC will provide school sites with information regarding academic mastery and earned credits as indicated on such transcripts to assist in appropriate placement and assignment of these academic credits. Such information will assist the school sites in identifying necessary support services for such students.

d. Conduct an annual preliminary assessment of appropriate Dual Immersion ratios. Before Round 1 student assignment letters are sent to parents/guardians, the District will assess the preliminary enrollment numbers for grades K and 1 in the Dual Immersion pathways, check for accuracy and determine whether the pathways have an appropriate ratio of target language proficient students and English-Only students (“EOs”). Any errors discovered as part of this assessment will be corrected before Round 1 student assignment letters are sent to parents/guardians. If no errors are found but the assessment shows that target language proficient students are inadequately represented, the District will take steps to remedy this inadequacy in immersion ratios before Round 2 student assignment letters are sent to families, including conducting outreach and recruiting additional target language proficient applicants.

e. Conduct an annual final assessment of appropriate Dual Immersion ratios. By November 1 of each year, the District will assess its final enrollment numbers in grades K and 1 in each of its Dual Immersion pathways and will determine whether the programs have an appropriate ratio of target language proficient and EO students. If this assessment shows that target language proficient students are inadequately represented, the District will take steps to remedy this inadequacy in future immersion ratios, including improving its outreach and recruitment of potential ELs, and providing staff with relevant professional development for future enrollment cycles, if appropriate (*see* subparagraph (f)).

f. Provide EPC counselors with ongoing professional development on appropriate EL placement. The District will provide EPC counselors with professional development on reviewing foreign transcripts for appropriate EL student placement; understanding the differing goals of the various pathways offered by SFUSD for ELs; the program structures; and the implications of such transcripts for appropriate student placement, including the District's expected placement ratio of English fluent students who are not proficient in the target language (1/3 to 1/2 of class) to students who are target language proficient (2/3 to 1/2 of class) in immersion programs. EPC counselors will use this information to counsel parents/guardians regarding the various EL program choices. On an annual basis or as needed, whichever is more frequent, the District will provide this professional development prior to the open enrollment process. When necessary, the EPC will collaborate with on-call staff in the MPD on counseling parents/guardians and making placement recommendations. EPC counselors will also receive professional development regarding the availability of translators and interpreters to assist in the counseling process, including cross trainings between EPC and TIU, school secretaries and parent/guardian liaisons where necessary.

g. Provide school counselors and assistant principals with professional development on appropriate EL placement. On an annual basis or as needed, whichever is more frequent, the District will provide school counselors and assistant principals with professional development on the guidelines for appropriate EL placement in EL programs, in Gifted and Talented Education ("GATE") programs, and Special Education programs.

**D. Reclassification of English Learners and Monitoring of RFEPs**

57. The District will use valid, reliable, and objective criteria that meaningfully measure English language proficiency in each of the four language domains of listening,

speaking, reading, and writing, and ensure that each EL has attained proficiency in English based on such criteria before being reclassified.

58. The District currently uses the CELDT to assess whether a student has achieved proficiency in English. The District will ensure that any conjunctive or composite score it uses on the CELDT or another ELP test to measure when a student has achieved proficiency in English: (a) requires sufficient grade-level proficiency in each of the four language domains to permit students to participate effectively in grade-level academic content instruction and assessments in English, and (b) overall is a valid and reliable measure of the student's proficiency in English that enables students' meaningful and equal participation in the educational program without EL services. In making the reclassification determination, the District may also utilize other valid and reliable criteria to determine if the EL is ready to exit EL services based on a proficient composite or conjunctive score on an ELP test that complies with this paragraph. At this time, the District uses and may continue to use standardized test information, grades, and teacher recommendations related to English proficiency, to determine whether to reclassify these students based on their proficient ELP conjunctive or composite score.

59. The District will evaluate the academic achievement data of those students reclassified under the new reclassification criteria that were promulgated before the beginning of the 2012-2013 school year to assess whether the new criteria yield valid and reliable assessment scores for reclassification from the EL program. The evaluation results using academic achievement data for the 2014-15 school year for ELs exited in the 2012-13 and 2013-14 school years will be included in the 2015 annual report filed with the Court. If these results and academic achievement data reveal that the new reclassification criteria are prematurely exiting

EL students from EL services or are otherwise not valid and reliable for reclassifying ELs, the District will amend its criteria accordingly to address any deficiencies that are identified and ensure their validity and reliability. Any amendments to reclassification criteria will be provided to the Parties in the annual report or upon request. If the Parties cannot agree on amended criteria for reclassifying ELs or dispute whether the evaluation results demonstrate the criteria's validity and reliability, any party may opt to move the Court to resolve the dispute.

60. The District will monitor ELs for two years once they are reclassified as RFEP to assess their post-reclassification academic success and to determine if they require additional academic, language assistance, or other instructional services.

## V. EL SERVICES

### A. Requirements for All Instructional Models

61. To maximize EL access to and success in a quality education, the District will provide effective services that include English language development ("ELD") and primary/target language development (when available), as well as full access to and engagement in the District's comprehensive grade-level academic college and career readiness program, core curriculum, electives, and extracurricular activities.

62. In the development, placement, and maintenance of instructional service pathways for ELs, the District will strive to avoid linguistic isolation across and within schools by ensuring to the greatest extent possible that ELs are integrated with never-ELs in content-area instruction and for recess, electives (*e.g.*, art, music, and other visual and performing arts), physical education, lunch, and library, and are not unnecessarily segregated from never-ELs in other classes given their ELD levels, the nature of their EL services, and their time and progress

in such services. The District will ensure that ELs are integrated with general education students in school functions and extracurricular activities.

63. The District will ensure that all EL classes, including designated ELD, integrated ELD, SDAIE content classes, bilingual classes, and dual language classes, will be taught by teachers with the appropriate EL certification based on State requirements.<sup>5</sup>

64. The District will provide ELs with designated ELD instruction that is adequate and appropriate relative to their ELP level and their language needs until reclassification. The District will provide all ELs with designated ELD instruction grouped by their ELP level for a minimum of 30 minutes per day. The District may group ELs by up to two consecutive ELP levels for designated ELD instruction (*e.g.*, grouping Level 1s with Level 2s, Level 2s with Level 3s). The District may choose to provide Level 4s and Level 5s with designated ELD instruction in their grade-appropriate English Language Arts (“ELA”) class (for instance, in what the District refers to as “ELA .6” courses). ELD instruction will be aligned with the 2012 California ELD standards and will correspond to the academic language, literacy, and content learning outcomes and expectations of the Common Core State Standards (“CCSS”) and the Next Generation Science Standards (“NGSS”).

65. In addition to at least 30 minutes of daily designated ELD, the District will also provide all ELs with integrated ELD instruction during core content area instruction that is provided in English until reclassification. The District will provide guidelines to schools to address EL needs based on their English proficiency level descriptors and typologies (*e.g.*, Long-

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<sup>5</sup> The United States has not evaluated whether the State requirements for teaching English learners adequately prepare teachers to provide ELD and SDAIE content instruction to ELs across English proficiency and grade levels. If the State changes the requirements for teacher certifications during the term of this MCD, the Parties will confer within 60 days to determine if they can agree that the State’s requirements satisfy the purposes of this Decree. For purposes of this Decree, the District will comply with these State requirements when hiring and assigning teachers of English Learners, and the United States reserves all rights to determine whether these state requirements comply with federal law.

term EL or Student with Interrupted Formal Education (“SIFE”) through various ELD models to support their accelerated academic language and literacy development and provide strategic interventions to address EL learning needs. The District will assist schools, as necessary, in developing schedules that ensure ELD classes do not interfere with ELs’ access to the core curriculum or any additional specialized services (*e.g.*, special education services). The District will ensure that ELs whose parents/guardians have opted them out of specialized EL classrooms or pathways will continue to receive EL services during content area instruction, where integrated ELD will be provided.

66. To ensure that all ELs have access to, can engage with, and achieve in grade-level academic content while they are learning English, the District will provide content classes to ELs using methods that: (a) include primary language with appropriate language proficiency leveled instruction (when available), (b) incorporate the 2012 California ELD Standards as mentioned above, and (c) use Specially Designed Academic Instruction in English (“SDAIE”) methodology.

67. The District will embed instructional support for Long-Term ELs, including accelerated interventions, into every pathway at every school site. All pathways will also include strategies to prevent students from becoming Long-Term ELs.

68. The District will offer ELs who are recent immigrants with little to no English proficiency and/or SIFE placement in a Newcomer pathway.

69. The District will provide all EL teachers with student rosters for their classrooms. The rosters will provide information on ELs by name regarding their current and former CELDT levels and subscores, current and former CST-ELA scores or another comparable assessment, their special education status (as relevant), and typologies. Site administrators will provide

support to teachers in understanding the instructional implications of these data and in approaching lesson planning to address the differentiated needs of their ELs.

**B. Specific Instructional Models**

70. The District will provide a portfolio of instructional pathways and services, including pathways with primary language instruction, and pathways with only English language instruction. (See the EL Program Guide in the Appendix to this document for current pathway descriptions.) ELs will have access to the following instructional pathways and services, among others:

- a. Dual Language Immersion Pathway;
- b. Biliteracy Pathway;
- c. English Plus Pathway;
- d. Newcomer Pathway, including services for SIFE;
- e. Newcomer services; and
- f. Long-Term EL services.

Services under Paragraphs 70(d) and (f) above will be embedded into the pathways described in Paragraph 70(a)-(c).

71. The District will provide current descriptions of each pathway and services in the annual publication of the EL Program Guide, which will be available at all school sites, at the Educational Placement Center, and on the District website, in the District's Major Languages.

72. The District will utilize available data, the monitoring process described below in Paragraph 102, as well as annual audits, to address the consistent and effective provision of EL services. The District may seek to modify or eliminate one or more of the pathways identified herein due to shifts in the District's demographics, changing needs of the District's ELs, and/or

the District's evaluation of the effectiveness of the various pathways. In deciding to significantly alter or eliminate a pathway, the District will consider feedback from the SFUSD community, including staff; EL students and families; community members; DELAC, BCC, or other interested individuals or organizations; and the findings of academic researchers in the field of EL education. If, based on the principles outlined above, the District decides to significantly alter or eliminate one or more of its pathways or services, the District will provide the Plaintiffs with 45 days to review and comment on such proposed alterations. "Significantly alter" means that the District is changing its pathways or services in a manner that will fail to satisfy the "Requirements for all Instructional Models" outlined in Paragraphs 61-69 above. The District and the Plaintiffs will work together in good faith to resolve any disagreements regarding the proposed alteration. If the District and the Plaintiffs are unable to resolve any disagreements within 45 days after the initial 45 day review period (total of 90 days), any party may opt to move the Court to resolve the dispute. Absent Court action to the contrary, the District will have the authority to make its alterations or eliminations notwithstanding any unresolved disagreements.

### **C. Access to Gifted and Talented**

73. The District will take the following steps to ensure that ELs have an equitable opportunity to participate in Gifted and Talented Education ("GATE") to the extent available:

a. Implement procedures to identify ELs who qualify for GATE. The District will implement, and update as appropriate, written procedures for identifying ELs in each school who may be able to qualify for GATE. The written procedures will include: (i) a list of indicators of giftedness to look for in ELs; (ii) written reminders that ELs may be eligible for GATE services under measures of giftedness or talent other than traditional measures such as



standardized test scores; (iii) written reminders that English fluency is not a criteria for GATE eligibility; and (iv) an explanation of the GATE referral process. The District will provide professional development to GATE Coordinators on these procedures annually, and Coordinators will provide professional development to principals and teachers regarding these procedures as needed.

b. Conduct GATE identification for ELs. Each school site's identification team will refer potentially GATE-eligible EL and non-ELs to the District GATE office during the second semester of each school year, which will complete the identification process. Although testing is only one of the criteria that can lead to GATE identification, where testing is the appropriate means of identifying ELs as gifted and talented, the District will continue to use the Naglieri Cognitive Processing Test or its equivalent. The District will translate the brief test directions into the Major Languages and will provide the directions in lower-incidence languages upon request.

c. Implement parent/guardian outreach strategies. The District will implement parent/guardian outreach strategies to inform parents/guardian of EL students and LEP parents/guardians in their primary language about the GATE program, including what the program offers, the referral process, and how to obtain more information about the program. These strategies will include, but not be limited to, posting GATE information in the Major Languages on the District's website, placing an item regarding the GATE program on the agenda of at least one DELAC meeting annually, and providing it for ELAC representatives to post on the parent bulletin board at their respective school sites.

d. Monitor EL participation in GATE. The District will track EL students' participation in GATE. If the data collected show that EL students are being identified for

GATE at a rate significantly lower than their representation in the District student population, or that EL students identified as GATE eligible disproportionately fail to participate in GATE as compared to non-EL students identified as GATE eligible, then the District will take affirmative steps to improve its EL identification and participation rates, including additional outreach to and education of parents/guardians of EL students and LEP parents/guardians regarding GATE.

**D. Student Success Teams**

74. The District's Student Success Teams ("SSTs"), which are a site-based body, will consistently implement procedures for interventions in the general education setting and pre-referral interventions prior to referral for special education evaluation that take into account the linguistic and cultural backgrounds of students, including doing the following for EL students:

a. Including at least one certificated staff person with appropriate EL certification based on state requirements in SST meetings for ELs;

b. Ensuring that the SST includes a staff member with personal knowledge of the EL student. If a staff member with personal knowledge of the EL cannot be available for the SST meeting, then another member of the SST will consult with at least one such staff member prior to the meeting;

c. Fully considering the language background, educational history, linguistic history (including CELDT scores and primary language proficiency assessment results where available), and language-related issues of ELs, including review of: (i) academic progress in an appropriate EL pathway; (ii) classroom observations; (iii) work samples in English and, where available, in the primary language; and (iv) outcomes of evidence-based interventions when making data driven decisions to evaluate EL students for special education and related services.

d. The District will provide professional development to SST Leads (*e.g.*, principals, assistant principals, head counselors, social workers, etc.) on the above procedures to effectively guide the SST process.

**E. Special Education**

75. Dual Services. The District will provide both special education services and EL services to each EL SWD in a manner appropriate to the student's individual needs. No EL will be denied EL services due to the nature or severity of the student's disability, and no EL will be denied special education services due to his or her EL status. If an EL student is found eligible for special education, the student will continue to receive EL services and interventions in addition to the special education services defined by the IEP. The District will provide both services using classroom structures and strategies designed to fulfill their obligations to provide the student with a free appropriate public education in the least restrictive environment and meaningful access to the District's instructional program. The District will fulfill this duty by providing instruction and services by appropriately qualified personnel in a manner that adequately and appropriately addresses both the identified language and disability needs of the student.

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

a. Assessing ELs for special education eligibility in the language (or other mode of communication) and form most likely to yield accurate information regarding what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

b. Conducting initial and subsequent special education evaluations for ELs using trained and qualified personnel who are proficient in the students' primary language. To the extent that such personnel are currently unavailable to the District, the District will make its best efforts to locate and obtain the services of such personnel through contracts or other means;

c. Ensuring that assessments and other evaluation materials are valid and reliable in light of the student's language proficiency and language background; and

d. Interpreting or translating special education evaluation reports and assessment materials in the primary language of the student's parents/guardians.

77. IEP process. The District will take the following steps to ensure that EL SWDs receive appropriate services and that LEP parents/guardians are included in the IEP process:

a. *Creation of the IEP:*

i. All IEPs developed for ELs will document the following:

- that the student is an EL;
- the student's English proficiency level;
- the student's primary language proficiency level to the extent available;
- all language-related accommodations needed for testing and assessments in compliance with state and federal law, including accommodations needed for standardized assessment instruments;
- any use of any individualized reclassification process; and
- the student's ELD services.

The District also will ensure that the electronic fields for the IEP required as outlined in the “SEIS IEP and Reclassification Guidelines for Students Who Receive EL and Special Education Services” are completed for each EL SWD.

ii. The IEP team will include a person who can interpret the instructional implications of evaluation results, including information to help the team understand the impact of the student’s disability as it relates to his or her EL status.

iii. IEPs for ELs will include linguistically appropriate goals, objectives, programs and services based on the individual needs of the EL SWD.

iv. IEP teams will include at least one certificated staff person with EL certification based on state requirements who can assist the IEP team in ensuring that the special education services needed to provide FAPE under the IDEA are accessible to the EL student given his or her limited English proficiency, and that the EL services required by Title VI and this MCD are accessible given his or her disability.

b. *EL Student and LEP Parent/Guardian Access to the IEP process:*

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

ii. The District will provide a translated copy of the IEP template at least five days before the IEP meeting to LEP parents/guardians who speak one of the District’s Major Languages. At or before the IEP meeting, the District will inform the parent/guardian of

their right to receive a translated copy of the IEP. After the IEP meeting, upon the request of a parent/guardian, the District will provide a translated copy of the completed IEP within a reasonable period of time, but no later than 10 business days following the District's receipt of the request. If, however, 10 business days is not feasible because the request is for a low-incidence language or is unusually complicated, the District will provide a translated copy of the completed IEP within 20 business days following the District's receipt of the request. The District may use a translation template for whichever portions of the IEP are common across all IEPs.

iii. The District will translate other documents provided to parents/guardians about matters arising under the IDEA or Section 504 (*e.g.*, information regarding IEP or 504 meetings and procedural rights) into the Major Languages, consistent with its obligation to translate essential information under this MCD.

iv. Prior to and during the IEP meeting, the District will remind LEP parents/guardians that they may, but are not required to, sign the IEP at that meeting. The District's reminder will be included in the meeting notice in a language the parents/guardians understand.

78. Record-keeping for EL SWDs. The District will maintain records for each EL SWD including: an online profile with information on whether the parent/guardian requested interpretation and the language requested (and other SEIS fields described in Paragraph 77); an online version of the IEP (content described in paragraph 77); copies of the IEP meeting notice; a copy of the IEP (with translated version if applicable); assessments; and other relevant supporting documents.

79. Professional Development. The District will provide professional development to Site Administrators and IEP case managers on the above IEP procedures before the beginning of the 2015-2016 school year to effectively guide the IEP process, and will provide professional development to any new Site Administrators and IEP case managers within six months of their taking the position.

## **VI. INSTRUCTIONAL STAFF AND OTHER PERSONNEL**

### **A. Qualifications, Hiring, and Recruitment**

80. The District will maintain a Board Policy that requires all new teachers to be EL-certified, and establishes requirements for existing teachers without the appropriate EL certification based on state requirements to obtain such certification.

81. The District, through the Human Resources Department, will continue to implement a teacher candidate recruitment process that identifies and gives preference to applicants for any teaching positions that possess one or more of the following qualifications: the appropriate EL certification based on state requirements (*i.e.*, CLAD/BCLAD certification), demonstrated expertise in teaching ELs, and high-level bilingual/biliterate skills. Applicants who do not have these qualifications will be required, at a minimum, to commit to enrolling in a program toward certification prior to being hired by the District.

82. The District, through the Human Resources Department, will utilize strategies to identify and attract diverse bilingual educators. These strategies will change and adapt to changing circumstances, and may include:

a. Building strong relationships with local institutions of higher education for the recruitment of candidates holding an EL/Bilingual authorization by offering on-campus

informational sessions, participating in bilingual networking events and holding job fairs targeting bilingual candidates;

b. Entering into Memorandum of Understanding agreements with local institutions of higher education to expand University Intern Programs. The close relationship between SFUSD and university programs will also allow District input into course development so university candidates exit with the skills necessary to be effective educators in a large, diverse urban school district;

c. Operating a Para-to-Teacher program (“PTTP”) to place teachers from diverse backgrounds in shortage areas;

d. Recruiting at events targeting multilingual educators;

e. Recruiting candidates from abroad, i.e. California Dept. of Education Mexican Teacher Exchange Program; and

f. Holding Bilingual Networking Events to introduce candidates to the District’s Multilingual Pathways, including outreach to local affinity group, i.e. The Chinese Teachers Association, Latin American Teachers Association, etc.

g. Sending bilingual job announcement to affinity groups who have access to bilingual educators.

83. The District, through the Human Resources Department, will utilize a screening and interview process that takes into account, among other things, a candidate’s verbal ability in English and any relevant target language, their background working with diverse students, including English Learners, and their level of certification, as appropriate based on the particular position and job responsibilities.



**B. Professional Development**

84. The District will provide personnel who work with ELs, including instructional staff and school- and District-level administrators, with professional development to assist them in carrying out the duties described in this MCD.

85. In addition to any other professional development identified elsewhere in this document, the District will provide the following professional development, by type of employee:

a. School Site Administrators.

i. *Designated and Integrated ELD.* Professional development on the purposes of ELD and the continuum of language development, the designated and integrated ELD guidelines, and how to recognize and support quality designated and integrated ELD, including how to ensure instruction is aligned to current designated and integrated ELD state standards.

ii. *Primary Language Instruction.* Professional development on the purposes of primary language instruction, language arts standards, primary language assessments, and how to recognize and support quality primary language instruction.

iii. *SDAIE.* Professional development about the appropriate uses of SDAIE strategies in connection with current designated and integrated ELD state standards, and how to recognize and support quality instruction using SDAIE strategies.

b. Teachers.

i. *Designated and Integrated ELD.* Professional development on implementing appropriate designated and integrated ELD standards-aligned curriculum and instructional strategies as part of a continuum of language development, grouping students

appropriately by English proficiency level descriptor, conducting language development assessments, and addressing all four domains of language development. Professional development will include strategies and tools for differentiating instruction for diverse learners, including students with disabilities.

ii. *Primary Language Instruction.* Professional development on implementing appropriate primary language standards-aligned curriculum and instructional strategies, primary language assessments, and addressing: (I) the four domains of language development for language/literacy instruction, and (II) content standards and academic language for subject matter instruction. Professional development will include strategies and tools for differentiating instruction for diverse learners, including students with disabilities.

iii. *SDAIE.* Professional development on implementing SDAIE instructional strategies in connection to current designated and integrated ELD state standards and approaches to differentiating instruction to address varying English proficiency levels of students. Professional development will include strategies and tools for differentiating instruction for diverse learners, including students with disabilities.

iv. *EL SWD.* The District will offer professional development to all teachers who provide services to EL SWDs regarding appropriate strategies for educating EL SWDs. The District will sponsor professional development events for these teachers throughout the year on the intersection between EL and special education service provision. The District will also direct school sites to ensure that special education and EL instructional staff participate in at least one joint planning meeting on EL services.

c. Translators and Interpreters.

i. Periodic required professional development for District interpreters and translators, including an explanation of their duties to provide meaningful access to information and to update their knowledge of specialized language related to the provision of services.

**VII. PARENT/GUARDIAN COMMUNICATIONS, OUTREACH, AND ENGAGEMENT**

**A. Parent/Guardian Communications**

86. The District's Multilingual Pathways Department, Translation and Interpretation Unit, Office of Family and Community Engagement, and Office of Public Outreach and Communications will, individually and collectively, be responsible for assessing, coordinating, and providing communications, outreach, and engagement services to parents/guardians of EL students and LEP parents/guardians.

87. During the first month of each school year, the District will reassess the Major Language groups in the LEP parent/guardian community, using, at a minimum, data from the HLS and Synergy, to ensure the availability of appropriate staff resources for interpreting and translating for these language groups, and to reassess the allocation of resources for this purpose.

88. To make essential information accessible to all families and provide LEP parents/guardians with meaningful access to the same information provided to non-LEP parents/guardians, the District will provide documents that are easy to understand and translation and interpretation services, by means of qualified interpreters or service providers as defined in this MCD, through the Translation and Interpretation Unit ("TIU"), personnel available at school sites, and contracts with outside service providers (wherever appropriate) in the following ways:

a. The District will ensure that, by the anticipated termination of this MCD (*see* Paragraph 109), all essential information in documents, forms, and communications provided to parents/guardians is translated into the District's Major Languages and made available to Major Language LEP parents/guardians in the same manner in which the essential information is provided to non-LEP parents/guardians (*e.g.*, distributed at one or all schools sites, in the District Office, posted on the District website, or mailed to parents/guardians). To the extent that such documents provide notice of events or are otherwise time-sensitive, the District will ensure that such documents are provided on a timeline that provides adequate notice and opportunity to respond. The District will prioritize translating remaining untranslated District-level essential information into Chinese and Spanish by the end of the 2015-2016 school year. To the extent that the District's translation resources can thereafter be directed in significant part to District-level and school-level translation into the other Major Languages, the District will redirect its resources in that manner.

b. The District will promptly provide LEP parents/guardians, whether they speak one of the Major Languages or other languages, with accurate written translations or oral interpretation of all essential information in documents, forms, and communications provided to parents/guardians in a language the LEP parent/guardian understands, either upon the LEP parents'/guardians' request or if the need for such translation or interpretation becomes apparent. The District will document all such requests and may choose the service provider to fulfill such requests so long as the translation and interpretation services are provided by qualified interpreters and qualified translators. Using the District's record of LEP parent requests for translations of written materials, the District shall notify the schools of all such translation needs whenever the District distributes information to parents through the schools.

c. The District will provide guidelines to District administrators and staff for assuring quality translation and interpretation services that explain the requirements of subparagraphs (a) and (b) above, and also include the following components: (i) an interpretation protocol for emergency situations; (ii) available services provided by the TIU; (iii) reminder to all staff that individuals who are not district-qualified interpreters, including students and other children, may not be relied upon to provide oral interpretation, except in emergency situations; and (iv) parent/guardian notices and forms on the availability of translation and interpretation services.

d. The District will maintain an accurate and current roster of all available personnel in each building who have been trained to serve as qualified interpreters and/or translators, including BCLAD teachers, with their current contact information. The District will distribute this list to all sites, and each principal and school secretary will make this list available to all school personnel at each school. The District will update and distribute this list at the beginning of the Fall and Spring semester of each school year.

e. The District will enter into a contract with an entity that will promptly provide qualified in-person and telephone interpreter services for languages other than Spanish and Chinese. The District will provide access to these services in response to school principal request, to the extent that funding is available, consistent with the requirements of this MCD. The District will maintain a record of requests that could not be accommodated because of funding or other reasons.

f. The District Translation Guidelines will instruct employees at each school to contact the principal or designee to obtain translation or interpretation services for essential information. The District will advise principals and designees that a school should seek on-site

assistance with translation and interpretation needs from their roster as necessary, and contact the TIU if such resources are not available on-site.

g. If an LEP parent/guardian requests that an adult family member or adult friend provide interpretation for a communication with the District or one of its schools, the District must provide an interpreter through qualified District or outside resources for all essential information that raises a potential conflict of interest, such as custody or restraining orders that may limit the friend or relative's access to student information. The District will not use family or friends of LEP parents/guardians or children or students for written translations of District- or school-generated documents.

h. The District will record the parents'/guardians' response to the question on the Home Language Survey, or its equivalent, regarding whether the parent/guardian would like written and/or oral communications translated into a language other than English into the District's student information database, which is accessible to school sites.

89. The District will create a written notice in the District's Major Languages about the translation and interpretation services described above that are available at school sites and through the TIU. The notice will include information about the services described above, including how to request translation and interpretation services, providing instructions for filling out the Primary Language Assistance Request Form, and providing information about how to file a complaint about such services. The notice will be posted in the District's central offices, and at each school site. The notice will also be included in the Student and Parent/Guardian Handbook which is distributed to every family, included in the EL Program Guide which is sent home to every EL family, and posted on the District's website in the District's Major Languages.

90. The District will distribute a Primary Language Assistance Request Form for parents/guardians to use to request translation/interpretation support at school sites. The form will be available in the District's Major Languages in the District's central offices such as the Office of Family and Community Engagement and the Education Placement Center; at school sites; in the Student and Parent/Guardian Handbook; and on the District website. The request form will include information on where to return the form, where to obtain additional information on interpretation and translation services, and that such services are provided at no cost to the parent/guardian.

91. The District will provide an EL Program Guide on its website, in the District's Major Languages, which includes information about the program models and their goals. The EL Program Guide, Enrollment Guide, and the District website will provide parents/guardians with a telephone number and email address for the staff person(s) available to provide further assistance in understanding the District's EL programs in the District's Major Languages

92. The District, through the MPD, will ensure that the correct descriptions of pathways and programs for ELs, including information about the implications for appropriate student placement, are included in the SFUSD EL Program Guide, which will be available in the District's Major Languages. The EPC will use its best efforts to release the translated Enrollment Guide and EL program descriptions at the same time as the English versions of these documents.

93. The District will develop and implement a system to track information on interpreter and translator services requested, including primary language of the request, date of the request, and date of services provided. At least once a year, the District will evaluate this information to assess the adequacy of the District's efforts to meet the communication needs of

LEP parents/guardians in a timely and effective manner. The District will use: (a) evaluation forms; (b) information obtained from the BCC, ELACs/DELAC, Community Liaisons, and parent organizations; and (c) principal surveys, to determine effectiveness of interpreter and translation services, and to determine whether professional development or modifications are necessary.

94. The District will provide District Office and school-based staff with an inventory of translated District documents that are located on the District website, and will create a searchable public version of that document inventory to be posted in the District's Major Languages on the District's website.

**B. Parent/Guardian Outreach and Engagement**

95. The District, through the MPD, will work with the DELAC and the ELACs to ensure that parents/guardians of ELs receive and understand adequate information about how EL placement takes place, and about the available EL pathways, including information regarding their goals, structure, and duration. The District will also develop a school-site orientation protocol that includes appropriate information for parents of EL students regarding programs and services for EL students, the CELDT, reclassification criteria, and EL instruction.

96. In order to build the capacities of site-based ELACs and the DELAC, at least once a year, the District will provide information to site-based staff and ELACs/the DELAC about the: (a) proper formation of ELACs/the DELAC; (b) effective ELAC/DELAC recruitment strategies to maximize parent/guardian representation and involvement; (c) proper election of members and officers of the ELAC/DELAC; (d) proper function of ELACs/the DELAC; and (e) protocols for parents/guardians to follow to obtain translation and interpretation services at no cost.



97. At least twice annually, the District will hold a community forum at which it will update the public as to the state of EL pathways in the District. The administrator who oversees the provision of multilingual education in the District, and other appropriate District administrators, will participate in the forum, and will: (a) solicit public comment on the District's pathways; and (b) answer questions about the pathways from members of the public. The District will engage the DELAC, the BCC, and other community groups that serve immigrant and LEP communities to support and assist in outreach efforts for the forum.

### **VIII. COURT AND COUNTY SCHOOLS**

98. This MCD applies to the court and county schools in all respects, except to the extent that the District cannot feasibly effectuate specific provisions of this MCD in the court and county schools because: (a) the process cannot occur in the same manner in these schools (i.e., enrollment for students entering the District for the first time through the court or county schools will not occur at the EPC); (b) the referenced program does not exist in these schools (i.e., these schools do not offer all EL pathways and do not offer GATE); or (c) the provision of a service is temporarily interrupted for public safety reasons.

99. The application of this MCD to the court and county schools is not intended to limit the exercise of professional judgment by law enforcement personnel, nor to prevent them, in conjunction with SFUSD personnel, from taking necessary steps to protect the physical safety of students or school personnel, or public safety.

100. The District will seek a Memorandum of Understanding ("MOU") with the public agency partners with which it shares responsibility for the operation of the court and county schools to ensure that the District can meet its obligations under this MCD.

## **IX. MONITORING**

### 101. Internal Oversight Committee.

a. The District will maintain the Internal Oversight Committee (“IOC”) to oversee SFUSD’s implementation of this MCD. The Committee will be headed by the Deputy Superintendent for Instruction, Innovation and Social Justice and will be charged, in part, with ensuring that monitoring activities are woven into the existing accountability and monitoring practices and structures of the District. The IOC will also identify effective uses of state and federal funds and develop guidelines for administrators and school site councils to support the adoption of effective practices.

b. In order to improve instruction for ELs and keep the MCD effective and relevant, the Committee will collect, analyze, and apply information from the observation protocol, audit results, and evaluation data to: (i) plan professional development; (ii) identify effective EL programs and phase out ineffective programs; (iii) determine optimal placement for EL programs within the District; (iv) determine the most effective uses of EL funding sources; (v) update the Observation Protocol as needed; and (vi) inform the development of District policies and site academic plans.

c. The IOC will engage in an ongoing dialogue throughout the year with both the BCC and the DELAC. At least annually, the IOC will invite a representative from the BCC and a representative from the DELAC to make a report, orally or in writing, to the IOC about BCC or DELAC concerns or questions, respectively regarding implementation of the MCD, and recommendations for improving the District’s program for multilingual education. In addition, the District official who oversees the provision of multilingual education in the District will, at

the first BCC meeting following each meeting of the IOC, report to the BCC on the matters addressed at the IOC meeting and will do the same reporting for the DELAC.

d. The District's Internal Oversight Committee will conduct an annual internal audit that includes school site visits and review of data from a randomized selection of 8-10 school sites (at least 2 high schools, at least 2 middle schools, and at least 4 elementary schools). For the schools that are visited, the auditing team will assess the following using an observation protocol: (i) identification of ELs; (ii) assessment and placement of ELs (including EL SWDs); (iii) consistency and fidelity of EL program pathways offered; (iv) quality and consistency of designated and integrated ELD, SDAIE, and primary language instruction for ELs; (v) designated and integrated ELD, primary language, and SDAIE supplemental materials; (vi) ELs' access to special education and GATE services; (vii) monitoring of current ELs and RFEP student achievement and success; (viii) professional development for EL staff; and (ix) parent/guardian involvement and outreach.

e. Based on the results of the annual internal audit, review of monitoring reports, and evaluation data (when valid and reliable), the IOC will annually assess and develop, as appropriate, new implementation measures to improve the District's EL programs during the upcoming academic year. These implementation measures will be incorporated into the District's Strategic Plan.

102. In addition to the monitoring described above by the IOC, the District will take other additional steps to monitor the implementation of this MCD:

a. Within 60 days of the start of each school year, the Multilingual Pathways Department will run data files to monitor whether all eligible ELs are appropriately placed in an

EL Pathway and services (as appropriate), including EL SWDs. Data will include program pathway, grade level, and CELDT level across all sites in the District.

b. The District will implement a Principal Support and Accountability process to ensure that program pathways at sites are effectively implemented, supported, monitored, and evaluated to support ELs' ability to make appropriate linguistic and academic progress. Within the process outlined in the San Francisco United Administrators' collective bargaining agreement, the District will work with principals to incorporate these accountability measures into the principal's evaluation protocols.

c. Within 60 days of the entry of this MCD, the District will amend its current administrative regulations to be consistent with the April 8, 2014 Staff Recommendations & Rules Committee Guidance to Support BCC Composition and Conduct. If the District seeks to change its administrative regulation or any Board Policy regarding the BCC, the District will notify the Plaintiffs at least 30 days prior to any change in the administrative policy or Board policy going into effect. The District will respond in writing to any concerns raised by the Plaintiffs to any proposed changes to Board Policy or District regulations regarding the BCC. If the Plaintiffs are not satisfied with the District's response and believe the changes are inconsistent with the Consent Decree, the Plaintiffs may raise their objections with the Court.

d. The District will support the following additional monitoring entities and processes:

i. The Bilingual Community Council ("BCC") as an advisory body to the Board by providing staff support to the BCC and making presentations regarding EL Pathways and services. The BCC will have the opportunity to review the annual report and file a minority report if the BCC voting majority opts to do so. To the extent practicable, the BCC and

the IOC will jointly conduct the aspects of their respective monitoring visits that can reasonably be coordinated;

ii. Monitoring visits conducted by the Plaintiffs. The Plaintiffs will provide the District with reasonable notice prior to the visit and will not place an undue burden on the District in the monitoring process;

iii. Federal program monitoring as required by the California Department of Education and the United States Department of Education; and

iv. Title III program audits as required by the United States Department of Education.

e. By the end of each school year annually, the District will conduct a school climate survey of a representative sample of District families, either as part of another survey or as a standalone survey, to determine whether its EL-related policies and procedures are: (i) being effectively communicated; (ii) responsive to the particular concerns of EL students, their parents/guardians, and LEP parents/guardians; and (iii) being appropriately implemented by faculty, staff, and administrators. Such surveys will be provided confidentially to ensure that ELs and their parents/guardians and LEP parents/guardians are able to participate honestly in such surveys, including facilitating access via the District website, email, or paper copies as appropriate. The District will incorporate the feedback from such surveys in any annual reports, audits, and action plans required or informed by this MCD.

## **X. REPORTING**

103. Before filing the annual report, the District will identify any changes in its student information system necessary and feasible to meet the reporting and evaluation requirements of this MCD. The parties acknowledge that any data or information that includes personally

identifiable student or personnel data will be provided by the District in accordance with applicable federal and state law, including the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g.

104. The District will submit annual reports to the Plaintiffs, and share those reports with the BCC, demonstrating its efforts to comply with the provisions of this MCD and monitor compliance across schools. The District will provide the first annual report by October 1 of each year, with the first report due October 1, 2015. If any of the information required for the annual report in a particular year is available in a document that the District has already prepared to comply with the No Child Left Behind Act (20 U.S.C. § 6301, et seq.) or other federal law, state law, or regulation, the District may include that document in its annual report and indicate the section of the annual report to which the document applies. Wherever practicable, all documents in the annual report will be provided in a form that is usable and searchable by the Plaintiffs (*e.g.*, Microsoft Excel, Microsoft Word). The annual report will include the following information about the preceding school year:<sup>6</sup>

a. A chart showing:

i. The number of students by primary language, grade level, and school whose primary or home language is other than English according to the HLS;

ii. The number of ELs at each school by primary language, special education status, grade level, and EL program;

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<sup>6</sup> In providing the information detailed below, if any of the District- or school-level policies or documents requested herein have not changed except for conforming annual edits (*e.g.*, changing the date on an enrollment form to the following year), the District does not have to re-provide this information, but may instead provide a list of documents that have not changed in the past year. As additional language(s) are added to the District's Major Languages, the District's reporting will include copies of documents translated into all such languages.

iii. The number of students (EL and non-EL) at each school whose parents/guardians are LEP (*e.g.*, as indicated by responses on the HLS, or its equivalent) by the language of the parent/guardian;

iv. The number of ELs who opted out of designated ELD by school, language group, and special education status, if any;

v. The number of ELs who have not opted out, but who are not receiving (a) designated ELD or ELD embedded ELA (*i.e.*, ELA.6) or (b) integrated ELD in core content areas, by school, primary language, and special education status, if any;

vi. A copy of the District's CALPADS 2.4 report as of October 1 each year, or any subsequent report required by the California Department of Education that includes substantially similar information;

vii. The number and percentage of students by school who exited the EL program at the end of the prior school year, based on the District's reclassification criteria, by grade level, language group, EL program, and special education status, if any;

viii. The number and percentage of RFEP students reclassified as EL, by grade level, school, primary language, and special education status, if any;

ix. The number and percentage of EL, RFEP, IFEP, and EO students who scored at or above proficient on the state-wide assessment in English Language Arts and Mathematics in prior year by grade level, EL program (where applicable), school, primary language, and special education status, if any;

x. The number and percentage of EL, RFEP, IFEP, and EO students who graduated from high school within four years, by school, primary language, EL program (where applicable), and special education status, if any;

xi. The number of ELs and RFEPS by school and primary language who: (a) were referred for special education; (b) were found eligible for special education services; and (c) receive special education services. The data on these students will include: CELDT level, special education eligibility, special education service description, and EL program;

xii. The number and percentage of ELs by school, EL program, and primary language, who (a) gained one overall proficiency level on the CELDT, and (b) reached the “English Proficient” level on the CELDT;

xiii. The number of EL, RFEP, IFEP, and EO students by school, grade level, and primary language who were: (a) referred to the GATE program, (b) found eligible for GATE, and (c) participated in a GATE class;

xiv. The number and percentage of EL, RFEP, IFEP, and EO students by school, grade level, and primary language who took advanced placement/honors classes;

xv. The number of teachers assigned to provide ELD, SDAIE, and primary language instruction and their teaching certification(s) and language fluency other than English, when available, by school;

xvi. The number of special education teachers who are: (a) EL certified, noting all of their certifications (*e.g.*, ELD, BCLAD, or CLAD); or (b) working on obtaining EL certification, noting the certification sought, by school;

xvii. The number of bilingual paraprofessionals by language at each school who (a) assist in providing EL services and (b) assist in providing EL services to EL SWDs;



- b. A copy of the SFUSD Enrollment Guide, in all languages in which it is available;
- c. A copy of the District's annual English Learner Program Guide which includes a description of each EL program pathway and list of sites offering the pathway, in all languages in which it is available;
- d. A copy of the preliminary and final assessments contemplated in Paragraph 56(d)-(e);
- e. A copy of the guidelines provided to schools per Paragraph 65;
- f. A copy of any program-level analysis conducted by the District to evaluate the effectiveness of its EL programs/pathways over the past year, including student academic achievement and the acquisition of English, by school and by pathway, as assessed by District-adopted primary language assessments or benchmarks;
- g. A copy of the template parent/guardian notification prior to an IEP meeting, in all languages in which it is available;
- h. A copy of the IEP template, in all languages in which it is available;
- i. A description of the District's recruitment efforts required by Paragraph 82;
- j. A copy of the aggregated and disaggregated data obtained from the monitoring protocol used in observations throughout the year;
- k. A copy of the District's annual audit of EL programs;
- l. A copy of the District's annual evaluation of the adequacy of its interpreter and translator services based on its tracking system, evaluation forms, and principal surveys;

m. A summary regarding the availability of ELD, native language, and SDAIE supplemental materials in the District for the prior school year and any District plans to obtain additional materials for the District in the coming school year;

n. A report using a longitudinal cohort analysis to identify longitudinal trends on the academic performance of the students enrolled in the pathways and evaluate effectiveness with multiple measures, including: (i) EL and RFEP student outcomes related to the development of English proficiency and academic achievement (including graduation, drop out, and retention rates); and (ii) analyses of the different program pathways to assess and compare student performance in different EL program pathways. Program impact will be evaluated for program pathways that have been implemented for at least 3 years. All data will be disaggregated by pathway, student CELDT level, and length of time in the program;

o. Reclassification evaluation results and any amendments to the District's reclassification criteria (*see* Paragraphs 57-60);

p. An updated list of the Major Languages and a list of the languages reviewed for purposes of the reassessment contemplated in Paragraph 87;

q. A copy of the roster of District and school staff trained to provide assistance in translating or interpreting required by Paragraph (88)(d);

r. The total number of requests to the District Office for translation and interpretation services, which entity (i.e., TIU, partner organization, telephonic interpretation service) provided the services, the number of such requests that were denied, and the basis for the denial (*e.g.*, unable to identify a qualified interpreter for a low incidence language);

s. A copy of the District's Translation Guidelines;

- t. A list of all requests for IEP translation that were not completed within 10 business days, by primary language, reason for delay, and number of days it took to complete;
- u. A copy of the written notice regarding translation and interpretation services required by Paragraph 89;
- v. A copy of the Primary Language Assistance Request Form;
- w. A link to the inventory of translated documents available on the District's website;
- x. A list explaining any exceptions made to the MCD per Paragraph 98, by issue, exception made, date(s), and reason for that exception;
- y. A copy of the Memorandum of Understanding described in Paragraph 100, and a description of the efforts undertaken to fulfill the requirements of that Paragraph;
- z. A copy of any new District administrative regulations pertaining to the BCC;
- aa. A chart listing all formal professional development conducted or provided by or for school or District personnel regarding the matters in this MCD, including the date(s), approximate duration, brief descriptions of content, number of attendees, and provider(s)/instructor(s);
- bb. Copies of all parent/guardian surveys and a random sample of results conducted pursuant to Paragraph 102(e) of this MCD; and
- cc. A link to the copy of any new or significantly amended documents that contain essential information, in all languages in which the documents are available, and that are (i) not otherwise contemplated by these requirements, and (ii) denoting whether they are maintained in a clearinghouse or space on or through the District's website.

## **XI. ENFORCEMENT**

105. The District will maintain records of all information pertinent to compliance with the terms of this MCD and will provide such information to the Plaintiffs upon request. To facilitate the implementation of the MCD, the Parties agree to hold a telephone conference in early November of each year to discuss questions or concerns about the Lau report.

106. The District acknowledges that the Plaintiffs, through their representatives and/or any consultant or expert the Plaintiffs may retain, may conduct on-site reviews of the District's schools to evaluate compliance with the MCD as set forth in Paragraph 102(d) upon giving reasonable notice and in consultation with the District to minimize any disruption to the educational process in the schools.

107. If any part of this MCD 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 MCD. Furthermore, the Parties will confer within 15 days of any such decision to determine whether the MCD should be revised or supplemented in response to the court's decision.

108. The District understands and acknowledges that in the event of a breach by the District of this MCD, the United States or the Private Plaintiffs may initiate judicial proceedings to enforce the specific commitments and obligations of the District under this MCD, provided that the United States and the Private Plaintiffs agree not to initiate or pursue any enforcement action without first attempting to resolve issues by negotiating in good faith for 30 days, or until the Parties reach an impasse, whichever comes sooner, over adequate measures to correct any alleged shortcomings in the District's compliance with this MCD.

109. This MCD will become effective on the date of its entry and will remain in effect until the District complies with its obligations under the MCD, which the Parties anticipate will be in the fall of the 2018-2019 school year. The United States and Private Plaintiffs will have 90 days from the receipt of the 2017-2018 annual report to raise concerns or objections regarding the District's compliance. The Parties will work in good faith to resolve concerns or objections. If, within 90 days after receipt of the 2017-2018 annual report, no party has filed a motion to extend the date of the Consent Decree based on concerns or objections regarding the District's compliance, the Court will deem the Parties to have stipulated to the to the termination of the MCD and the MCD will terminate without the necessity of any further order from the Court.

SO ORDERED, this the \_\_\_ day of \_\_\_\_, 2015.

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United States District Judge

APPROVED AS TO FORM:

/s/ Zoe M. Savitsky

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United States of America

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