

Settlement Agreement

between

The United States of America

and

The California Department of Education and  
The California State Board of Education

## SETTLEMENT AGREEMENT

The California Department of Education (“CDE”) and the California State Board of Education (“SBE”) (collectively, the “State”) and the United States of America (“United States”) (collectively, the “Parties”) enter into this settlement agreement (“Agreement”). The United States asserts noncompliance findings regarding CDE’s and SBE’s system for monitoring services to English Learner students (“ELs”) in California local education agencies (“LEAs”) under the Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1700 *et seq.* (“EEOA”), as set forth in its Letter of Findings on May 22, 2015.<sup>1</sup> CDE and SBE assert that the State’s monitoring and services to ELs are in compliance with the EEOA. This Agreement resolves the Parties’ dispute over compliance and reflects the Parties’ shared goal that all of California’s approximately 1.4 million ELs receive EL services with qualified teachers, as Section 1703(f) of the EEOA requires.

### DEFINITIONS

1. “State” refers to CDE and SBE, collectively.
2. “ELs” refers to students who have been determined to be English Learners, Limited English Proficient, or Non-English Proficient and thus require assistance to overcome language barriers that impede their equal and meaningful participation in the State’s instructional programs.
3. “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 designated for ELs or in a classroom where ELs and non-ELs

---

<sup>1</sup> The EEOA prohibits both states and LEAs from denying equal educational opportunity to any individual “on account of his or her race, color, sex, or national origin.” 20 U.S.C. § 1703. Such a denial occurs when, *inter alia*, an “educational agency fail[s] . . . to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional program.” *Id.* § 1703(f). The term “educational agency” includes both state educational agencies and local educational agencies. *Id.* § 1720(a). Thus, states and LEAs share the duty to take appropriate action to serve ELs.

are educated. California law mandates, with few exceptions, a Sheltered English Immersion<sup>2</sup> (“SEI”) program for ELs that have not achieved a reasonable level of English proficiency.<sup>3</sup> Under California law, ELs determined to have reasonable fluency are required to receive a program of English Language Mainstream, with few exceptions. EL services in California must include, *inter alia*, English Language Development (“ELD”) and access to the core subject matter through Specially Designed Academic Instruction in English (“SDAIE”), Primary Language Instruction (e.g., in transitional bilingual and dual language programs), or other methodologies. ELs must continue to receive EL services until they are formally reclassified as English proficient.

4. “ELD” instruction addresses the listening, speaking, reading, and writing domains in the California ELD Standards. These ELD standards correspond to the academic rigor and language demands of the California Standards. “Designated ELD” refers 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. “Integrated ELD” refers to ELD that is embedded in core content instruction throughout the school day so that ELs can meaningfully access grade-level core content while promoting their English language development in the four language domains.
5. “SDAIE” refers to California’s approach to 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 they can meaningfully access academic content in the English language.

---

<sup>2</sup> The California Education Code defines Sheltered English Immersion as “an English language acquisition process for young children in which nearly all classroom instruction is in English but with the curriculum and presentation designed for children who are learning the language.” Cal. Educ. Code § 306.

<sup>3</sup> California Code of Regulations Section 11301(a).

6. "CALPADS" is the California Longitudinal Pupil Achievement Data System by which LEAs currently report student level data to CDE, including which EL instructional services are provided in a course.
7. "CALPADS 2.4 report" refers to the annual snapshot report LEAs must open, review, and certify as to accuracy as part of their Fall 2 Data Submission to CALPADS. The report includes, for all students enrolled on Census Day, the number of ELs receiving ELD, SDAIE, Primary Language Instruction, other EL services, and, beginning in school year ("SY") 2015-16, no EL services.
8. "Language Census reports" refers to certified data that LEAs reported in SY 2011-2012 and prior to CDE regarding their provision of instructional settings and services to ELs.
9. "FPM" refers to the Federal Program Monitoring process by which CDE assesses LEAs' EL programs and compliance with various state and federal laws, including the EEOA.
10. "NOF" refers to the notice of findings CDE provides to an LEA if CDE finds an LEA to be out of compliance. In the NOF, CDE identifies any violations and spells out the corrective action required to remedy them.
11. "CMT" refers to the CDE Monitoring Tool, and is a web-based system that gives LEAs and CDE a common site for transmitting information, such as LEA submissions of data, documents, NOF's or corrective action, and CDE's responses to and evaluations of this submitted information, including the resolution of findings.

#### **PURPOSE**

12. The State, by and through its undersigned representative, agrees to the terms of this Agreement.
13. By entering into this Agreement, the State does not concede that its prior conduct gives rise to a finding of liability under the EEOA.

14. In consideration for the commitments made here by the State, the United States agrees not to initiate judicial proceedings to enforce the requirements of the EEOA that are addressed by this Agreement. This commitment does not relieve the State from fulfilling any other obligations under the EEOA, other federal laws, or any existing court order pertaining to the rights of ELs. Consistent with Paragraph 37 below, this Agreement does not foreclose the United States' right to initiate judicial proceedings in Federal court to enforce the terms of this Agreement or to address other issues relating to the State's compliance with EEOA obligations not specifically addressed in this Agreement.
15. This Agreement will become effective on the date of its entry and will remain in effect for two years, subject to the enforcement mechanisms set forth in Paragraph 37. The date on which counsel for the United States signs the Agreement will be considered its entry date. The Parties may, upon a mutual signed agreement, supplement or amend this Agreement to address changed circumstances or to improve the delivery of language services to ELs.

#### **BACKGROUND**

16. This Agreement does not affect the obligations or rights of any party to comply with or enforce the September 2015 court-approved Settlement in *D.J. v. State of California* ("*D.J.*"), a case in which private plaintiffs claimed that the State was violating the EEOA.
17. By letter dated May 3, 2013, the United States raised concerns about alleged persistent, certified LEA reports of unserved ELs and reminded the State of its federal obligation to supervise the EL programs of California LEAs and ensure that the language needs of ELs are met.
18. The United States' May 3, 2013 letter initiated an EEOA compliance review of the State's system for monitoring LEA language services to California ELs. In response, CDE produced tens of thousands of documents and cooperated in submitting data and by making

CDE personnel available. The United States' review included analyzing these documents and data, and interviewing CDE personnel.

19. By letter dated May 22, 2015, the United States notified the State that it failed to take the "appropriate action" required by the EEOA by not meeting the duties to supervise LEAs and ensure that they address ELs' language needs. Specifically, the United States found that: a) CDE and SBE failed to respond appropriately for over a decade to Language Census reports in which hundreds of LEAs certified that tens of thousands of ELs were not receiving any EL instructional services; and b) when the State ultimately responded to the Language Census reports in 2013, that response fell far short of the "appropriate action" required by the EEOA to address the needs of these unserved ELs. In response, the State agreed to undertake the actions specified in this Agreement.
20. The State denies these claims and asserts that the statutory purpose and design of the Language Census Report was to assist LEAs in determining staffing needs for the subsequent fiscal year and not to monitor whether EL students were being appropriately served. The State asserts that it uses the much more comprehensive FPM system to monitor, evaluate, and affirm LEA compliance with state and federal requirements for providing academic instruction to EL students.

#### **SPECIFIC REQUIREMENTS**

##### **STATE RESPONSE TO LEA DATA**

21. The State must respond in a timely and effective manner to credible evidence that LEAs are failing to serve their ELs, including information contained in LEAs' certified CALPADS 2.4 reports. CDE will notify LEAs of such violations within 60 days of the close of the Fall 2 submission window. CDE will provide a protocol for the LEA to submit to CDE, within 90 days of the notice, documented evidence that EL instructional services have been

provided in a manner that resolves the violations.

22. Within 60 days of entry of this Agreement, CDE must provide a written notice to all LEAs who reported unserved ELs in their SY 2015-2016 certified CALPADS 2.4 report. The notice must direct the LEAs to provide EL services immediately and require LEAs to submit evidence of their compliance to CDE within 90 days of this notice, or within 60 days of the commencement of SY 2016-17, whichever is later. CDE has received funding to hire three 2-year limited term full-time EL monitoring consultants.
23. CDE will require LEAs to submit to CDE sufficient evidence to demonstrate that the EL service violation reflected in their certified CALPADS 2.4 report has been resolved. CDE must ensure that the evidence demonstrates the identified violations have been remedied.
24. By August 31, 2016, CDE will issue written guidance to all LEAs to clarify that every public charter school in California is prohibited from denying enrollment to ELs on the basis of their EL status or national origin and must provide all of its ELs with EL instructional services, which must include designated ELD and access to the core subject matter through SDAIE, Primary Language Instruction, or other methodologies. CDE must provide a draft of this notice to the United States for its review and approval by August 24, 2016.

#### **FPM MONITORING**

##### **A. Consideration of CALPADS 2.4 Reports in the LEA Selection Process for FPM Monitoring**

25. When selecting LEAs for onsite and online FPM reviews in SY 2017-18 and 2018-19, CDE must consider, as part of an LEA's compliance history, data regarding unserved ELs in CALPADS 2.4 reports since SY 2015-16. CDE must include charter schools in each year's FPM review selection process.

26. Specifically, CDE must consider, among other factors, the following when selecting LEAs for onsite and online FPM reviews:
- a. The LEA's history of reporting "no services" provided to ELs in their CALPADS 2.4 reports since SY 2013-14; and
  - b. The number and percentage of ELs reported in CALPADs as not assigned to any course providing EL instructional services, and prioritize reviews of LEAs and charter schools with the largest numbers and percentages of ELs not assigned to any course providing EL instructional services.
27. During onsite and online FPM reviews, CDE shall monitor the selected LEA's provision of ELD and access to the core subject matter, and provide written notice to any LEA that reports that ELs are not receiving either ELD or access to the core subject matter. CDE shall request that, within 45 days of the notice, noncompliant LEAs provide CDE with evidence demonstrating that all ELs are receiving both ELD and access to the core subject matter.
28. Within two years of entry of this Agreement, CDE must conduct onsite monitoring of at least five of the following six LEAs, which reported unserved ELs in each year from SY 2007-08 to SY 2012-13, but have had no FPM reviews between SY 2007-08 and SY 2014-15 and were not scheduled for a review in SY 2015-16: Burbank Unified, Menifee Union Elementary, San Gabriel Unified, Santa Cruz County Office of Education, Santa Monica-Malibu Unified, and Sequoia Union High. If CDE does not conduct onsite monitoring of one of the foregoing LEAs, it must conduct online monitoring of this LEA within two years.

**B. Improvements to Online Monitoring Tool**

29. In addition to monitoring EL teacher authorizations (VI-EL 15), CDE will add the



following items from its SY 2016-17 onsite monitoring tool to its online monitoring tool:

- a. Appropriate Student Placement (VI-EL 17);<sup>4</sup>
- b. Program of ELD Instruction (VII-EL 19); and
- c. Access to the Core Subject Matter (VII-EL 20).

30. LEAs who receive online monitoring pursuant to Paragraphs 25-27, are found to be out of compliance with two or more of the four items in Paragraph 29 above, and do not provide adequate evidence contemplated in Paragraph 27 above, demonstrating that all ELs are receiving required EL instructional services, will be monitored onsite within two years of the expiration of the 45-day window for providing evidence.

### **PROFESSIONAL DEVELOPMENT**

31. CDE must develop and implement policies and training on the monitoring, review, and corrective action process associated with its system of monitoring, including FPM, NOF, and CMT processes, LEAs for EL service violations. CDE must provide training to EL monitoring consultants by September 30, 2016, and at least once annually thereafter for the duration of this Agreement.

32. CDE must provide the Paragraph 31 training to any new and temporary EL monitoring consultants within six weeks of each new or temporary employee's start date.

33. The training must include:

- a. Using the FPM, NOF, and CMT processes;
- b. Conducting complete and timely monitoring and review of LEAs committing EL service violations (FPM Protocols 2015-16, pages 3, 6, 7, 10, 12, 17, and 19);
- c. Requiring appropriate and effective corrective action of LEAs in a timely manner for each type of EL service violation (FPM Protocols 2015-16, pages 10, 13, and

---

<sup>4</sup> Citations refer to specific monitoring items on CDE's SY 2016-17 FPM instruments.

- 17);
- d. Granting extensions only in compelling circumstances and holding LEAs to any extended deadlines (FPM Protocols 2015-16, pages 17 and 19);
  - e. Reviewing in a complete and timely manner LEA evidence of corrective action to determine if it resolves each EL violation identified in onsite or online monitoring (FPM Protocols 2015-16, page 17);
  - f. Following up with an LEA within 45 days regarding the sufficiency of the evidence provided under Paragraphs 22-23 and 27, and where needed, requiring submission of sufficient evidence of compliance within 30 days, unless an extension of time to respond is justified (FPM Protocols 2015-16, page 17); and
  - g. Documenting a resolution of each finding within 45 days of CDE receiving the supporting evidence, and conducting follow-up monitoring within 90 days to determine whether a corrective action was actually implemented (FPM Protocols 2015-16, pages 17 and 19).

#### **REPORTING**

34. By October 1 of 2016 and by August 1 of 2017 and 2018, during the period that this

Agreement remains in effect, the State shall provide the United States with:

- a. copies of all written notices or guidance it has sent to LEAs under Paragraphs 21, 22 and 24;
- b. a list of all LEAs that submitted evidence of corrective action pursuant to Paragraphs 22-23 and 27, including (i) the dates of CDE's notice, (ii) the LEA's submission, (iii) any follow up by CDE, and (iv) CDE's determination that the EL service violation was resolved;
- c. a list of all K-12 LEAs that received onsite and online FPM reviews in the

preceding year, including how many LEAs reported unserved ELs in CALPADS 2.4 reports per Paragraphs 25-26, and how many received an onsite FPM review pursuant to Paragraph 30; and documentation of all trainings provided to CDE reviewers pursuant to Paragraphs 31-33, including for each training: its title, date, length, participants by name and job position, and a copy of all training documents.

### **ENFORCEMENT**

35. The State shall maintain electronic records of information and data pertinent to compliance with the terms of this Agreement. The State understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the State understands that during the two years that this Agreement remains in effect, if necessary, the United States, through its representatives and any consultant or expert it may retain, may visit the State and/or its LEAs, interview staff and students, and request such additional reports, information, or data as are necessary for the United States to determine whether the State has fulfilled the terms of this Agreement and is in compliance with the EEOA. The State shall honor any such requests by making the requested reports, information, or data available to the United States for its review and duplication within 30 days.
36. If any part of this Agreement is for any reason held to be invalid, unlawful, or otherwise unenforceable by a court of competent jurisdiction, such decision shall not affect the validity of any other part of the Agreement. Furthermore, the State and United States shall confer within 15 days of any such decision to determine whether the Agreement should be revised or supplemented in response to the court's decision.
37. The State understands and acknowledges that in the event of the State's noncompliance with this Agreement, the United States may initiate judicial proceedings to enforce the

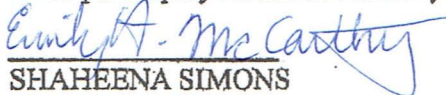
EEOA and the specific commitments and obligations of the State under this Agreement, including but not limited to seeking an extension of the Agreement's duration, provided that the United States agrees that it will not initiate or pursue any enforcement action without first attempting to resolve the breach by negotiating in good faith for 30 days, or until the parties reach an impasse, whichever comes sooner, over adequate measures and/or extensions of this Agreement to correct any alleged shortcomings in the State's compliance with this Agreement.

38. The State understands and acknowledges that the United States, consistent with its responsibility to enforce the EEOA, retains the right to investigate and, where appropriate, initiate judicial proceedings concerning any future alleged violations of the EEOA by the State.

39. The following signatures indicate the consent of the Parties to the terms of this Settlement Agreement, which is effective upon its mutual execution.

**For the United States:**

VANITA GUPTA  
Principal Deputy Assistant Attorney General



SHAHEENA SIMONS  
EMILY H. MCCARTHY  
NATANE SINGLETON  
U.S. Department of Justice  
Civil Rights Division  
Educational Opportunities Section  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Telephone: (202) 514-4092  
Facsimile: (202) 514-8337

9/9/16

**For the California Department of Education:**

TOM TORLAKSON  
State Superintendent of Public Instruction

Tom Torlakson

TOM TORLAKSON  
California Department of Education  
1430 N Street, Room 5111  
Sacramento, CA 95814  
Telephone: (916) 319-0800  
Facsimile: (916) 319-0100

Date: 9/8/16

**For the California Board of Education:**

Michael H. Kirst  
MICHAEL KIRST  
President

California State Board of Education  
1430 N Street, Room 5111  
Sacramento, CA 95814  
Telephone: (916) 319-0827  
Facsimile: (916) 319-0175

Date: 9/8/16