

# **Settlement Agreement**

between

The United States of America

and

The North Plainfield, N.J. Board of Education

## SETTLEMENT AGREEMENT

### DEFINITIONS

1. "North Plainfield School District" and "the District" refer to the North Plainfield, N.J. Board of Education and the schools that it operates.
2. "ELLs" refers to students who are English Language Learners, Limited English Proficient, or Non-English Proficient and thus require assistance to overcome language barriers that impede their equal participation in the District's instructional programs.
3. "ESL" refers to English as a Second Language.
4. "Language services" refers to ESL or Bilingual instruction for ELLs.
5. "POE" refers to port of entry ELLs (i.e., ELLs who recently immigrated to the United States).

### PURPOSE

6. The Board of Education for the North Plainfield School, by its undersigned President, agrees to the terms of this Settlement Agreement and to comply fully with its provisions in order to address and resolve the issues raised by the United States Department of Justice, Civil Rights Division (hereafter the "United States") regarding the District's federal legal obligations under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 *et seq.* (hereafter "EEOA").
7. In consideration for the commitments made herein by the North Plainfield School District, the United States agrees not to initiate judicial proceedings to enforce the requirements of the EEOA with respect to the District's practices in the areas addressed herein that preceded the entry of this Settlement Agreement.

8. This Settlement Agreement shall become effective on the date of its entry and shall remain in effect for three (3) full school years following that date. The date on which counsel for the United States signs the Settlement Agreement shall be the date that shall serve as the entry date of this Settlement Agreement. This Settlement Agreement is undertaken as a means of alternative dispute resolution to avoid litigation and for the purposes of judicial and governmental economy. The North Plainfield School District asserts that it is currently taking the steps required by this Settlement Agreement, that it will continue to take those steps, and that it has not violated the EEOA. The United States does not agree, but in the spirit of compromise, the parties have decided not to litigate over areas of disagreement. This Settlement Agreement shall not be construed as an admission of liability by the North Plainfield School District as to any actions or conduct which could be deemed as violative of the EEOA.

#### **GENERAL REQUIREMENT**

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

#### **SPECIFIC REQUIREMENTS**

##### **Registration and Identification of ELLs**

10. The District shall ensure that all personnel involved in the student registration process are trained in the procedures for administering the District's home language survey, including (but not limited to) the procedure that all students must complete the home language survey at the time of registration.

11. For all students who indicate on their home language survey that they speak a language other than English or that they reside in a home where a language other than English is spoken, the District shall refer such students to a certified teacher (preferably an ESL or Bilingual teacher) to determine if the students should be given a language proficiency test. The District shall have a plan to ensure that personnel throughout the District follow this referral procedure in a uniform and consistent manner, and shall provide the United States with a copy of its plan for review and comment, as specified in Paragraph 31. When the plan becomes final after the review period, the District shall ensure that all personnel involved in the student registration process are trained in the procedures set forth in the plan.

12. The District shall ensure that uniform student registration materials are used at all schools and that those materials are available in English and Spanish. The District shall provide the United States with a copy of its registration materials for review and comment, as specified in Paragraph 31.

13. The District shall maintain the following records in each student's files: the student's completed home language survey; a document indicating whether the student was referred for initial English language proficiency evaluation and/or testing; and documents that provide the results of any initial English language proficiency evaluation and/or testing (*e.g.*, test papers and scores, evaluation results, etc.).

14. At each school facility, the District shall compile a list of non-teaching and teaching personnel by language ability who are available to provide translation assistance when necessary to serve ELLs and/or their parents, relatives, guardians or guests. To the extent practicable, the District shall ensure that the non-teaching personnel on each school's list are

used to provide these translation services, and that ESL and/or bilingual teachers are not pulled away from their teaching and/or class preparation responsibilities to serve as translators.

15. The District shall provide written communications, including but not limited to the ESL Entrance Letter and the Right of Refusal, to parents/guardians of ELLs in their native language if the written communication is available in the appropriate language on the New Jersey Department of Education's website. The District shall ensure that appropriate school-based personnel are trained in using the District's translation services, including but not limited to those outlined in this Settlement Agreement, and shall develop, implement and train personnel in procedures to follow when verbal language translation is needed in any languages that are not spoken by school-based personnel.

#### Instruction of ELLs

16. Consistent with District policy and the applicable laws and regulations of New Jersey, the District shall ensure that all ELLs receive at least 150 minutes of ESL instruction each week during each school year.

17. To the extent practicable, the District shall ensure that it assigns ELLs who are in its Bilingual program to single-grade classrooms that follow single-grade curricula. The District also shall ensure that ELLs who are assigned to multi-grade Bilingual classrooms receive their complete grade appropriate curriculum each school year, and shall have a plan describing the strategies that the District's teachers shall use to serve the different educational needs of the ELLs in those classrooms. The District shall provide the United States with a copy of its plan for review and comment, as specified in Paragraph 31.

18. The District shall ensure that all ESL and Bilingual teachers receive training at least once per school year on how to implement the District's ESL curriculum. The training shall, *inter alia*, advise to teachers on how to implement the District's standards-based curriculum into their classroom instruction.

19. The District shall ensure that all teachers of general education classes (*i.e.*, teachers of classes that are not specifically a part of the ESL or Bilingual programs) receive training at least once each school year regarding: identifying students who have not been identified as ELL but may need to complete English language proficiency evaluation and/or testing; working with current and recently exited ELLs; and coordinating with ESL and Bilingual teachers to identify and address any language barriers that may hinder current and/or recently exited ELLs from participating in general education classes.

20. The District shall ensure that ELLs are integrated, to the extent practicable, with general education students in school instruction, functions, co-curricular activities, and extracurricular activities. Consistent with the applicable laws and regulations of New Jersey, the District shall integrate all grade K through 6 ELLs in special classes, including but not limited to art, music, physical education, lunch, and recess.

#### Resource Allocation

21. The District shall assess and review its foreign language inventory in each of its school libraries and develop a plan to ensure that the inventory is appropriate for ELLs in terms of their numbers, age, native language(s), grade levels, and reading levels. The District shall provide its plan and a summary of its inventory to the United States for review and comment pursuant to Paragraph 31.

22. The District shall ensure that the media center and library in each school facility are fully accessible to ELLs. The District's efforts in this regard shall include, but are not limited to providing sufficient orientation and training to ELLs to enable them to use the written, audio, visual and computerized resources in the media center and library.

#### Access to Programs

23. The District acknowledges that ELLs are entitled to services that shall enable them to participate meaningfully in all of the District's educational programs, services and activities for which they are eligible.

#### Special Education

24. The District shall provide special education services and language services to all students who are eligible for both such services. The District shall not deny language services to special education students who are ELLs and qualify for language services and shall not deny special education services to students who are ELLs and qualify for special education services.

25. Consistent with applicable federal law and regulations, all Individual Education Plans (IEPs) of ELLs shall consider the language needs of the ELL as such needs relate to the ELL's IEP, and the District shall record in the ELL's IEP the type of language and special education services provided to the ELL, including the nature and duration of such services (e.g., 45 minutes of ESL and 45 minutes of resource instruction per day). Each special education ELL's folder shall contain: the student's current language proficiency test score; the languages in which special education assessments were conducted; modifications, if any, of standard assessment procedures; the qualifications of the individuals completing the assessments; the objective test results; and the impact of language on the interpretation of the data, including a

determination by the IEP team that the student's level of English proficiency is not determinative of the decision to administer special education services.

#### Basic Skills

26. The District shall provide basic skills services to all ELLs who are eligible for such services, and the District's basic skills eligibility criteria shall permit consideration of all ELLs regardless of their English proficiency level. The District shall submit its basic skills eligibility criteria to the United States for review and comment pursuant to Paragraph 31. In the second semester of each school year, the District shall provide basic skills services to all POE students who are eligible for such services.

27. To the extent practicable, the District shall make basic skills services accessible to ELLs by having: (a) a teacher credentialed in both basic skills and bilingual or ESL instruction provide services; (b) a teacher credentialed in basic skills who is also fluent in the ELL's native language provide services; or (c) a bilingual or ESL teacher or teacher assistant assist the basic skills teacher in providing services.

#### Gifted and Talented Program

28. The District shall notify all ESL, bilingual, POE, and general education teachers as well as all parents/guardians of ELLs in writing that ELLs may be referred for gifted and talented programs, and shall ensure that the gifted and talented eligibility criteria permit consideration of all ELLs regardless of their language proficiency level. If an ELL qualifies for the gifted and talented program and language services, the District shall ensure that the ELL receives both such services.

## Monitoring Current and Exited ELLs and Evaluating Language Services

29. The District shall implement a system for monitoring the academic performance of current and recently exited (i.e., exited for less than one full school year) ELLs in general education classes. As part of this system, the District shall on a quarterly basis: (a) compile a list of current and recently exited ELLs who are enrolled in general education classes, and share this list with general education teachers; (b) collect data on the academic progress of current and recently exited ELLs in general education classes, including the data listed in Paragraph 30 below; (c) provide such data to a guidance counselor, multi-cultural counselor, or the Bilingual Coordinator; and (d) have the guidance counselor, multi-cultural counselor, or the Bilingual Coordinator meet with the exited student to discuss whether he/she needs any support services (e.g., tutoring) or needs to be retested for possible reentry into the ELL program (i) within six (6) weeks of his/her exit, or within six (6) weeks of his/her first day of school if he/she were exited at the end of the prior school year; and (ii) whenever the academic data collected each quarter reveals that the student is failing one or more subjects or standardized tests.

30. To monitor current and exited ELLs and to evaluate whether the language services are overcoming ELLs' language barriers, the District shall develop and maintain a database that disaggregates the following information: standardized test scores; achievement test scores, class grades, retention in grade rates, graduation rates, and enrollment in honors or advanced classes, special education, and gifted and talented programs. The database shall be operational by no later than December 30, 2004.

### Policy and Procedure Review by the United States

31. By December 30, 2004, the District shall submit the following policies and procedures to the United States for review: (a) a uniform procedure that outlines when personnel involved in

student registration should refer students for English language proficiency evaluation and/or testing (*see supra* Paragraph 11); b) uniform student registration materials (*see supra* Paragraph 12); c) a plan for ensuring that ELLs who are assigned to multi-grade Bilingual classrooms receive their complete grade appropriate curriculum (*see supra* Paragraph 17); d) a summary of each library inventory, and the District's inventory plan (*see supra* Paragraph 21); e) the District's basic skills eligibility criteria (*see supra* Paragraph 26). The United States shall have thirty (30) days to raise any questions or concerns regarding any of this information, and the District shall respond to these concerns within thirty (30) days. If, after receiving the District's responses, the United States finds that the District has adequately addressed any questions or concerns raised, the United States shall promptly notify the District in writing. If the District and the United States cannot resolve any disagreements about any of the District's proposed plans and procedures, the United States and the District reserve the right to litigate the matter.

32. After implementing the policies and procedures identified in this Settlement Agreement, the District may propose changes to any of those plans and procedures by advising the United States of the proposed change in writing. The United States shall have thirty (30) days to raise any questions or concerns regarding any of the proposed changes, and the District shall respond to these concerns within thirty (30) days. If the United States finds that the District has adequately addressed any questions or concerns raised, the United States shall promptly notify the District that it has no objection to the proposed change. If the District and the United States cannot resolve any disagreements about any of the District's proposed changes, the United States and the District reserve the right to litigate the matter.

Annual Reporting to United States

33. The District shall provide to the United States annual reports fully detailing its efforts to comply with the provisions of this Settlement Agreement. The District shall submit the annual reports outlined herein each year by December 15th, with the first report due December 15th, 2004. If any of the information required for the annual report in a particular school year is available in a document that the District already has prepared to comply with the No Child Left Behind Act (20 U.S.C. § 6301, *et seq.*) or other federal or state statute or regulation, the District may include the document in its annual report and indicate the section of the annual report to which the document applies. The annual reports shall include the following information about the school year preceding each annual report, unless otherwise specified:

- a. The number of students, by school and grade, enrolled in the District;
- b. The number of ELLs, by school, grade, native language, and language acquisition program (*e.g.*, Bilingual & ESL, ESL only, other), separately listing the number of ELLs who were not served in a language acquisition program and the number of ELLs who elected not to participate in a language acquisition program;
- c. The number of students, by school grade, and native language, who completed a home language survey in connection with registering for the school year preceding the annual report; the number of any students who, based on their responses on the home language survey, were referred to a certified teacher to determine if language proficiency testing was needed; the number of students who were given a language proficiency test; and the number of any students who ultimately were identified as ELLs;
- d. Copies, in English and in Spanish, of all forms related to student

registration that are provided to students, parents, and/or the general public, as well as a list of other languages in which those forms are available;

e. Copies of each school's list of non-teaching personnel available to provide Spanish to English and/or English to Spanish translation assistance;

f. A list of Bilingual and ESL teachers, by school, grade, language(s), certification(s), and years of experience;

g. A list of any training provided to District personnel in the following areas: procedures for administering the home language survey and referring students to a certified teacher for initial language evaluation; procedures for using the District's translation services; and steps for implementing the District's ESL curriculum, teaching current and recently exited ELLs in general education classes, and coordinating with ESL and Bilingual teachers regarding serving ELLs in the general education classroom setting. For each such training, please describe the content of the training, provide the date(s) on which the training was provided, and provide the number and type of District personnel who attended the training.

h. The number of students, by school, grade, native language, and years in the ELL program who were exited from one of the District's language acquisition programs;

i. The number of students, by school, grade, native language, and years in the ELL program, who were re-entered into one of the District's language acquisition programs;

j. The number of books in English in each school library, and the number of books, by language, in any other foreign languages in each school library;

l. For each school and grade, a list of the occasions per week, by school and grade, in which ELLs are integrated with general education students in the same classroom,

program, function or activity;

m. The number of ELLs, by grade and native language, who were (i) referred for Basic Skills, (ii) found eligible for Basic Skills, and (iii) received Basic Skills services, including the nature and duration of such services and any language accommodation provided (e.g., math basic skills for 45 minutes a week with a bilingual aide).

n. The number of ELLs, by grade and native language, who were (i) referred for special education, (ii) found eligible for special education, including the ELL's disability category, and (iii) received special education services, including the nature and duration of such services (e.g., 45 minutes a day of resource with a bilingual special education teacher).

o. For each school, the number of special education teachers or aides with ESL or bilingual training, noting the type of training, or with foreign language fluency, noting the foreign language.

p. The number of ELLs, by school, grade and native language, who (i) were referred for the gifted and talented program, noting the referring individual (e.g., bilingual teacher, enrichment teacher, parent); (ii) found eligible for the gifted and talented program; and (iii) participated in the gifted and talented program, noting the nature and duration of the participation (e.g., 45 minutes of pull-out a week).

q. A description of the District's system for monitoring current and recently exited ELLs, confirming that: the data listed in Paragraph 30 was collected; recently exited ELLs met with the personnel designated in Paragraph 29 within the applicable six-week period and whenever quarterly data collection revealed that students were failing one or more subjects; and support services were available to recently exited ELLs at each school, including a description of

such services.

r. A description of any plans or procedures that the District proposes to implement in connection with complying with this Settlement Agreement; and

s. Any other information that the District believes will be helpful.

#### Recordkeeping

34. The North Plainfield School District shall maintain records of all information pertinent to compliance with the terms of this Settlement Agreement and shall provide such information to the United States upon request.

#### **ENFORCEMENT**

35. The North Plainfield School District acknowledges and understands that, in the event of a breach by the District of this Settlement Agreement, the United States may initiate judicial proceedings to enforce the EEOA and the specific terms, commitments and obligations of the District under this Settlement Agreement.

36. The North Plainfield School District acknowledges and understands that the United States, consistent with its responsibility to enforce the EEOA and notwithstanding the terms of this Settlement Agreement, retains the right to investigate and, where appropriate, initiate judicial proceedings concerning any future alleged violations of the EEOA by the District.

37. This Settlement Agreement, including signature pages, ends on page 16. The following signatures indicate the consent of the parties to the terms of this Settlement Agreement. The date on which counsel for the United States signs the Settlement Agreement

shall serve as the entry date of this Settlement Agreement.

**For the United States:**

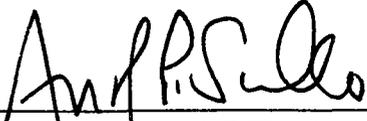
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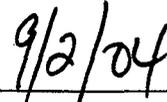
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9/3/04  
Date Signed

For The North Plainfield, N.J. Board of Education



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Date Signed

**END OF SIGNATURES**