

12-18-08

Settlement Agreement

Between

The United States of America

And

The Worcester, MA Public School

SETTLEMENT AGREEMENT

DEFINITIONS

1. "Worcester School District" and "the District" refer to the Worcester, MA Board of Education and the public schools it operates.
2. "TBE" refers to the Transitional Bilingual Education program currently offered to Spanish-speaking ELL students at select District schools. Teachers who speak Spanish provide bilingual instruction and use English and native language materials.
3. "ELL students" refers to students who are English Language Learners, Limited English Proficient, or Non-English Proficient and thus require assistance to overcome language barriers that impede their equal participation in the District's instructional programs.
4. "ELD" refers to English Language Development instruction, which the Massachusetts Department of Education ("MADOE") also refers to as ESL instruction. ELD and ESL instruction address listening, speaking, reading and writing standards as contained in the *Massachusetts English Language Proficiency Benchmarks and Outcomes* ("ELPBO").
5. "PIC" refers to the Parent Information Center operated by the District that enrolls new students in grades PreK-6.
6. "Admissions Offices" refer to the individual offices at each of the District's middle schools and high schools that collectively enroll new students in grades 7-12.
7. "SEI" refers to the Sheltered English Immersion program. This is a K-12 program for international students and students who speak languages other than English. The SEI

- program includes two components: ESL/ELD, and sheltered content instruction (math, science, and social studies) aligned with grade-level standards.
8. "Language services" refers to ESL/ELD, TBE, or SEI instruction for ELL students.
 9. "New Citizens Centers" refers to the program designed to address the problems faced by ELL's with significant academic gaps, currently located at the Dr. James A Caradonio New Citizen Center at the New Ludlow building.
 10. "Major languages" is defined to include the four foreign languages with the highest incidence among the District's ELL population.

PURPOSE

11. The Worcester School District by its Interim Superintendent duly authorized by vote of the Worcester School Committee agrees to the terms of this Settlement Agreement and agrees to comply fully with its provisions in order to address and resolve the issues raised by the United States Department of Justice, Civil Rights Division (hereafter "the United States") regarding the District's legal obligations under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 *et seq.* (hereafter "EEOA").
12. In consideration for the commitments made herein by the Worcester School District, the United States agrees not to initiate judicial proceedings to enforce the requirements of the EEOA that (a) govern the District's education of ELL students, and (b) compel the District to take appropriate measures to overcome language barriers that impede equal participation by ELL students in the District's instructional programs.
13. This Settlement Agreement shall become effective on the date of its entry and shall

remain in effect for three full school years following that date. The date that counsel for the United States signs the Settlement Agreement shall be considered the entry date. The signatories undertake this Settlement Agreement as a means of alternative dispute resolution to avoid litigation, and for the purposes of judicial and governmental economy. The Settlement Agreement shall not be construed as an admission of liability by the District to any violations of the EEOA.

GENERAL REQUIREMENT

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

SPECIFIC REQUIREMENTS

Registration and Identification of ELL Students and Access to Programs

15. Within 45 days of the entry date for this Settlement Agreement, the District shall submit for the United States' review and comment written procedures that describe in detail the process for registering ELL students at the PIC and individual Admissions Offices. The procedures shall: identify the forms used at each location; require an English proficiency assessment if the Home Language Survey ("HLS") indicates that a language other than English is spoken at home or by the student, or there is any other reason to believe that English is not the student's primary language; identify the English proficiency assessments to be used at each location; and explain how to calculate the composite score on the assessments and use this score for placements.
16. The District will continue to ensure that all students in grades 2-12 referred for

language testing receive an English proficiency assessment in all four language domains (listening, speaking, reading, and writing), and that students in kindergarten and first-grade are assessed for listening and speaking. The District will continue to ensure that the composite score on the assessment is used to determine the ELL student's Lau designation (i.e., overall proficiency level) and that this designation is used to ensure an appropriate placement of the ELL student in language services.

17. Within 45 days of the entry date for this Agreement, the District shall submit to the United States via electronic mail a revised written notice for the parents/guardians of ELL students that explain the different language programs and services available to ELL students so that parents/guardians can make meaningful, informed choices among the programs and services. If the United States has any questions or concerns about the proposed written notice, it must raise them within thirty (30) days, and the District shall respond to these questions or concerns within thirty (30) days.
18. The District shall continue to ensure that the forms in Attachment A, including the HLS, are completed during the registration of all students at the PIC and the Admissions Offices. The District shall make these attached forms and the notice to parents/guardians regarding the District's language services available in the major languages. For ELL parents or guardians who speak a foreign language that is not one of the major languages, the District shall provide, to the extent feasible, an oral interpretation of the forms and notice within a reasonable time where (1) a parent or guardian requests oral interpretation services, or (2) the need for oral translation services is apparent.

19. If the District seeks to revise the forms in Attachment A during the term of this Agreement, it shall seek the United States' consent to the proposed revisions, and the United States shall respond to the District's request for consent within thirty (30) days. If the United States does not raise any questions or concerns within the thirty-day period, the District may use the proposed revised forms.
20. The District shall continue to inform all registration and intake staff at the PIC and the Admissions Offices that enrolling students must be referred for an English proficiency assessment if the HLS indicates that a language other than English is spoken at home or by the student, or there is any other reason to believe that English is not the enrolling student's primary language.
21. The District shall ensure that all intake personnel at the PIC, the Admissions Offices, and the Central Office involved in the student registration process receive ongoing training on the following tasks:
 - a. completing the intake/registration forms of students;
 - b. assessing students' English proficiency in the four domains of listening, speaking, reading, and writing;
 - c. referring appropriate students for special education ("SPED") screening or SPED services, when required and if the students have a current Individual Education Plan ("IEP");
 - d. informing parents of the District's ELL program options and responding to parental questions regarding assessment procedures; and
 - e. obtaining translators or interpreters for languages that staff at the PIC,

Admissions Offices, or Central Office do not speak fluently when (1) an individual requests translator or interpretation services, or (2) the need for such services is apparent.

22. The District will continue to train faculty and intake staff on how to input and update ELL-related data fields, including the Lau designation, on the District's student data and tracking systems. Much of these data will come from the final placement form for each ELL, which will identify the ELL student's proficiency levels in all four language domains, the overall Lau designation, the ELL student's program placement (*e.g.*, TBE or SEI), and whether there is prior knowledge that the ELL is SPED or has been referred for a SPED evaluation, if applicable. Appropriate staff members in the District's ELL Department shall review the tracking data on a monthly basis to ensure that all students identified as eligible for ELL services are receiving appropriate services, unless the students have opted out of or exited the District's ELL programs. In conducting this review, appropriate staff members in the ELL Department shall compare the SAGE list of ELL students at each school with the class roster for all TBE, ESL, ELD and SEI classes offered at the school to determine whether any students with a Lau A, B or C code are not receiving adequate language services.

Instruction of ELLs

23. To the extent practicable, the District will provide ELL services by a teacher with an ESL or ELL license at each school that enrolls ELL students. If the District learns that any ELL students are not receiving ELL services, it shall take reasonable steps to ensure that appropriate ELL services are provided at these ELL students' schools, or

if necessary, at another school within a reasonable distance of the ELL student's residence within a reasonable time period. If an ELL student attends a school where ELL services are not offered on site, the District will notify the student's parent/guardian in writing that the student has the option to transfer to a school where ELL services are available.

24. The District shall permit students dually identified as special education and ELL ("SPED ELL") to participate in the programs offered at the District's New Citizens Centers if
 - a. the student would qualify for instruction at a New Citizens Center but for their disability; and
 - b. the services required to accommodate the student's disability can be provided by SPED teachers or aides in a mainstream setting.
25. To the extent feasible, the District shall ensure that the New Citizens Center is staffed with sufficient special education teachers and aides to accommodate enrolled students with disabilities.
26. The District shall ensure that all ELL students in the District who have not opted out of the ELL program shall receive at least one class period (i.e., approximately 45 minutes) of ELD/ESL per day. To the extent practicable, ELD/ESL class periods shall be taught by a teacher with an ESL or ELL license.
27. Consistent with the MADOE Guidelines, the District shall provide the following services, to the extent practicable:
 - a. all ELL students who are at the beginning and early intermediate English

proficiency levels with ELD/ESL instruction for at least 2.5 hours per day, delivered by a teacher with an ESL or ELL license; and

- b. all ELL students who are at the intermediate English proficiency level with ELD/ESL instruction for at least 1 to 2 hours per day, delivered by a teacher with an ESL or ELL license, and 1 to 2 hours of English Language Arts or reading instruction per day, delivered by a teacher qualified to teach ELL students.

28. Consistent with the MADOE Guidelines for ELL students at the transitioning English proficiency level, the District shall assign these students to a teacher qualified to teach ELL students.

29. ELL students in the SEI program shall be enrolled in sheltered content classes (math, science, and social studies) where instruction is primarily in English, and teachers use sheltered content instructional techniques (such as, for example, grouping students by language proficiency level, adapted materials and texts, visual displays, cooperative learning and group work, primary language support, and clarification) to make lessons understandable. The District shall ensure that in SEI sheltered content classes: (a) supplementary materials support the content objectives and contextualize learning; (b) the instructors teach vocabulary that is relevant to the subject matter; (c) adapted content, including texts, assignments, assessments, and presentation of content in all modalities, is within the ELL students' English proficiency level(s); (d) ELL students are afforded regular opportunities to practice and apply new language and content knowledge in English; and (e) academic tasks are clearly explained to ELL students.

30. For ELL students in the Spanish-English TBE program, the District shall implement the transitional bilingual education model appropriately with adequate native language materials.

Translation Services

31. Within 45 days of the entry date for this Agreement, the District shall, to the extent financially feasible, staff or contract with a sufficient number of interpreters and translators to ensure that:

- a. All letters and notices disseminated at the District level, and documents containing essential information¹ disseminated at the school level are translated into the major languages;
- b. for ELL parents or guardians who speak a foreign language that is not one of the major languages, the District shall either translate District-level or school-level notice or provide an oral interpretation of the notice within a reasonable time upon request by the parent or guardian of a student; and
- c. oral interpretation is provided for any conference between a District teacher/administrator and a non-English speaking parent/guardian, so long as the parent/guardian's request provides the District with reasonable notice.

32. Within 45 days of the entry date for this Agreement, the District shall develop a list or database of the names and contact information for all District employees and contract employees, disaggregated by school, who are qualified and available to provide

¹ "Essential information" includes, but is not limited to: (a) documents regarding individual education issues, such as IEP meetings and evaluations, report cards, and other academic progress reports; (b) documents provided to parents/guardians during the disciplinary process; (c) requests for parent permission for student participation in District/school sponsored programs and activities; and (d) newsletters, bulletins and other announcements

translation and interpretation services in the major languages as well as low incidence languages represented among the District's ELL students and their parents/guardians. The District shall update this list or database at least once a year with current information. If the different bargaining units agree, the list or database shall be posted in the PIC, the Welcome Center, and each school's central office. The list or database shall be accessible to PIC and Welcome Center staff, as well as teachers and administrators at each school in the District. The District shall provide written instructions to staff members at the PIC and Admissions Offices on how to access and use this list or database.

33. Except in the event of an emergency, no student shall be used or relied upon to provide translation and/or interpretation services for another student, parent or guardian.
34. The District shall ensure that all appropriate school-based personnel are informed about how to access and request the interpretation and translation services required by Paragraph 31 above.

Instructional Staff

35. The District shall ensure that teachers of ELL students are adequately trained to provide quality language services to those students. To this end, the District shall continue to provide MADOE ELL Endorsement Training in Categories 1 through 4 for SEI, TBE, general education and special education teachers. Furthermore, the District shall monitor in writing the progress of these teachers toward appropriate category training and licensure at least once per year. To the extent practicable, the

District shall ensure that teachers of ESL and ELD classes have an ESL or ELL license or are making consistent progress toward obtaining an ESL or ELL license by October 2009, or within a reasonable period of time.

36. The District shall ensure that all employees who evaluate teachers of ESL/ELD, SEI, TBE and sheltered content classes are adequately trained regarding sheltered techniques, native language instruction (where such instruction is legally required) and ESL/ELD instruction, so that they are able to conduct a meaningful evaluation.
37. By November 15 of each year of this Agreement, the District shall submit an ELL Professional Development Plan for the United States' review. Such plans shall include the Category 1-4 training being offered each school year, including all mandatory and voluntary training, and require such training for SPED teachers who instruct ELL students. Such plans also shall ensure that all teachers of regular education classes receive professional development at least twice each school year if possible, regarding working with current and recently exited ELL students and coordinating with teachers of ESL/ELD, SEI and TBE classes to identify and address any language barriers that may hinder current or recently-exited ELL students from participating in general education classes.

Resource Allocation

38. The District shall provide adequate and appropriate instructional materials for ELL students. These materials shall include ESL and ELD materials for ESL and ELD classes that are appropriate for the proficiency levels of the enrolled ELL students. For SEI classes, the District shall ensure that core materials include an ELL

component and/or supplemental materials for ELL students. For all TBE classes, materials shall include native language materials that are grade and subject appropriate. Toward this end, the District shall complete a review of its instructional materials within 45 days of the entry date for this Agreement, and provide the United States with a copy of its materials inventory.

39. Within 45 days of the entry date for this Agreement, the District shall either (a) certify that it had sufficient and appropriate ESL, ELD, SEI, and native language materials for ELL students at all grade and proficiency levels as of the beginning of the 2008-09 school year, or (b) describe what steps it has taken since the beginning of the 2008-09 school year to acquire adequate native language materials for all ELL students. The District shall re-certify the adequacy of its native language materials at the commencement of each academic year that this Agreement remains in effect.

Special Education

40. 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 qualify for language services and shall not deny special education services to students who are ELL students and qualify for special education services.
41. The District shall ensure that the appropriate staff members in the Admissions Offices and the Quadrant Offices expressly inform parents that dually identified SPED ELL students are eligible for both ELL and SPED services and those parents are not forced to choose between services.

42. The District shall identify in the student information system the instructional model through which ELL and SPED services are provided to each ELL student including the following models: (1) teacher with bilingual and SPED certifications; (2) teacher with ESL/ELL and SPED certifications; (3) SPED certified teacher team teaches with bilingual certified teacher; (4) SPED certified teacher team teaches with ESL/ELL certified teacher; (5) SPED teacher teaches with a bilingual aide; (6) ongoing consultation between the SPED teacher and a teacher with a bilingual and/or ESL/ELL certification; and (7) other.
43. Consistent with applicable federal law and regulations, all IEPs of ELL students shall consider the language needs of the ELL student as such needs relate to the student's IEP, and the District shall record in the 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, sheltered math, sheltered social studies, and sheltered science). The IEP shall also include: the student's current Massachusetts English Proficiency Assessment ("MEPA") and Massachusetts Comprehensive Assessment System ("MCAS") test scores; the languages in which SPED assessments were conducted; modifications, if any, of standard assessment procedures; the qualifications of the individuals completing the SPED assessments; and the impact of language on the interpretation of the data, including a determination by the IEP team that the ELL student's level of English proficiency is not determinative of the decision to administer SPED services.
44. To the extent possible, the District shall continue its efforts to recruit and hire SPED

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

Monitoring Current and Exited ELL Students and Evaluating Language Services

45. The District shall implement a system for monitoring the academic performance of current and recently exited (i.e., exited within the past two years) ELL students. As part of this system, all current ELL students should be identified by their proficiency level on all class rosters and all recently exited students should be identified as Former Limited English Proficient ("FLEP") for two years on all class rosters. The District shall monitor FLEP students twice a year by reviewing their grades, standardized test scores (e.g. MCAS), and progress reports to determine if the student needs any academic support services (e.g., tutoring) or needs to be retested for possible reentry into the ELL program. Consistent with the MADOE Guidelines, if a FLEP student fails to make academic progress, as measured by grades and assessments, during the first three to six months after being classified as FLEP, and if a school-based team familiar with the student determines that this failure is due to a lack of English proficiency, the student's instructional programming shall be redesigned and the student shall be classified as ELL.
46. To monitor current ELL students and FLEP students and to evaluate whether their language services are overcoming language barriers, the District shall ensure that its data capacity analysis is able to disaggregate the following information by school and

ELL program (i.e., SEI, TBE and monolingual): English proficiency assessments (e.g., MEPA), standardized test scores (e.g., MCAS), class grades, retention-in-grade rates, graduation rates, and enrollment in honors, special education, and enrichment programs (e.g., Advanced Placement and gifted classes). The data capacity analysis shall be operational within 45 days of the entry date for this Agreement.

Durkin Consent Decree and Voluntary Lau Plan

47. No provision of this Settlement Agreement shall be construed to eliminate or abrogate any legal obligation imposed on the District by the 1978 Consent Decree and Voluntary Lau Plan entered in Latin Association for Progress and Action v. Durkin, Civil Action No. 78-1150K (D. Mass.).

ANNUAL REPORTING TO THE UNITED STATES

48. 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 July 15, with the first report due July 15, 2009. 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 law, state law, 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 ELL students by school, grade, and native language who received

- each language service (SEI, TBE, ESL, ELD, etc.);
- b. the number of ELL students by school, grade, and native language who (i) did not receive language services and (ii) opted out of language services;
 - c. the number of students by school and native language who indicated on the HLS that a language other than English is spoken at home or by the student; the number of any such students who were assessed with the oral IDEA Language Proficiency Test ("IPT"), or other validated and reliable English proficiency test(s) to determine their level of English proficiency; and the number of any assessed students who ultimately were identified as ELL students;
 - d. copies of all forms related to student registration and ELL eligibility that are provided to students, parents, and/or the general public, as well as a list of other languages in which these forms are available;
 - e. A list of the staff at the PIC, Admissions Offices, and Central Office who conduct registration, intake, ELL screening, English proficiency assessments, and/or placement in ELL programs. This list shall include the name of each staff member and the foreign language(s) they speak fluently;
 - f. a list of all ESL, ELD, SEI, and TBE teachers that includes for each teacher their school, grade, language(s) they speak, certification(s), and years of experience (note: if any ELL tutor was used, please provide the same data);
 - g. a list of all ELL-related training provided to District personnel, including a description of the content of each training, the date(s) of the training, and the number and type of District personnel who attended the training;

- h. the number of students by school, grade, native language, and language service who were exited from the District's ELL program by: (i) meeting exit criteria, (ii) a discretionary exit based on teachers' recommendations, or (iii) by a parent's request for an early exit;
- i. the number of FLEP students by school, grade, native language, and language service who were re-entered into the District's ELL program;
- j. for each school, the number of special education teachers and aides with ESL/ELD or bilingual training and/or certification(s), noting the type of training and/or certification(s), and the foreign language(s) that the teacher or aide speaks fluently;
- k. the number of ELL students by grade and native language who: (i) were referred for special education services, (ii) were found eligible for such services; and (iii) received such services, noting the instructional model numbers referenced in Paragraph 42 as well as the duration of such services (e.g., bilingual special education teacher (model 1) provides SPED services and one period of ESL per day or SPED teacher and a bilingual aide (model 5) provide special education services and one period of ESL per day);
- l. A description of the District's system for monitoring FLEP students over a two-year period, specifying the data that are reviewed and including a copy of the FLEP monitoring forms for each FLEP student that exited within the past two years;
- m. a description of any material changes that the District proposes to make to its

procedures for:

- i. registering students;
 - ii. assessing ELL students;
 - iii. assigning ELL students to classes;
 - iv. providing translator and interpreter services to ELL parents or guardians;
 - v. ESL/ELD, SEIP, or bilingual curricula;
 - vi. ELL-related training of ELL, special education, or regular education teachers; and
 - vii. system for monitoring current ELL students as well as FLEP students over a two-year period;
- n. a description of the District's progress in obtaining appropriate native language materials, ESL/ELD materials, and supplementary SEIP materials for its ELL students, including a list of newly obtained ELL-related materials;
 - o. a hard copy of the translator and interpreter lists or printouts for the data capacity analysis described in Paragraph 32; and
 - p. any other information that the District believes will be helpful.

ENFORCEMENT

49. The District shall maintain records of all information pertinent to compliance with the terms of this Settlement Agreement and shall provide such information to the United States upon request. The District understands and acknowledges that in the event of a substantiated breach by the District of this Settlement Agreement, the United States may initiate judicial proceedings to enforce the EEOA and the specific commitments

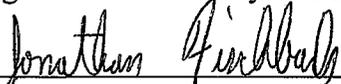
and obligations of the District under this Settlement Agreement.

50. The District 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 District.

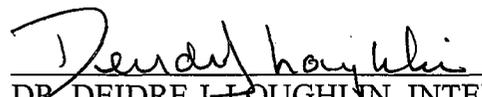
51. The following signatures indicate the mutual consent of the parties to the terms of this settlement Agreement. The date that counsel for the United States signs the Settlement Agreement shall be considered the entry date of this Settlement Agreement.

For the United States:

GRACE CHUNG BECKER
Acting Assistant Attorney General

 1/26/09
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END OF SIGNATURES