

Agreement

between

The United States of America

and

The Mercer County School District

AGREEMENT

DEFINITIONS

1. “Mercer County School District” and “the District” refer to the Mercer County, West Virginia School Board and the public schools it operates.
2. “ELL” refers to a student who has been determined to be an English Language Learner or Limited English Proficient (LEP) and is therefore entitled to receive services to overcome language barriers that impede his/her equal and meaningful participation in the District’s instructional programs. “ELLs” include, but are not limited to, Level 5 (Fluent) students who are monitored by the District before exiting their ELL status.
3. “English Language Service Level” or “ELS Level” refers to a student’s level of proficiency in English based on an assessment of the four language domains of speaking, listening, reading, and writing. Students’ English proficiency levels in the District shall be determined annually by their scores on a valid and reliable English language proficiency assessment of all four domains. ELLs in the District are assigned one of five designations based on their proficiency level: “Level 1” (Negligible); “Level 2” (Very Limited); “Level 3” (Limited); “Level 4” (Intermediate); or Level 5 (Fluent).
4. “Exited ELL” refers to a student who was formerly an ELL but subsequently met the criteria for exiting their ELL status based on a valid and reliable assessment of the student’s English proficiency in each of the four domains of speaking, listening, reading, and writing. An exited ELL is entitled to receive monitoring of his/her academic progress to determine whether the student has and maintains a sufficient level of English proficiency to succeed in mainstream classes without language acquisition services.
5. “Opt Out ELLs” are students with ELS Levels 1-4, whose parents or guardians make an informed written decision to refuse to have their children enrolled in the ELL Program or to withdraw their children from the ELL Program.
6. “ESL” refers to English as a Second Language instruction, which is direct, explicit instruction about the English language that provides a systematic and developmentally appropriate approach to teaching language to ELLs.

7. “ELL services” in the District include ESL instruction by a certified ESL teacher and language support in core content classes by teachers who have received training in content-based ESL and sheltering methodologies.
8. “Core Content” refers to English language arts, math, science, and social studies.
9. “SPED” refers to Special Education and “SPED ELL” refers to an ELL with a disability under the Individuals with Disabilities Education Act (IDEA) or Section 504 of the Rehabilitation Act of 1973 (Section 504) and who is therefore entitled to receive both SPED and ELL services.

PURPOSE

10. The Mercer County School Board agrees to the terms of this 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 (the United States) as of the date of this Agreement regarding the District’s legal obligations under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 *et seq.* (EEOA). This Settlement Agreement shall be binding upon the successor members of the Mercer County School Board and successor District Superintendents.
11. In consideration for the commitments made herein by the District, the United States agrees not to initiate judicial proceedings to enforce the requirements of the EEOA that govern the District’s education of ELLs in the areas covered by this Agreement. This commitment does not relieve the District from fulfilling any other obligations under the EEOA.
12. This Settlement Agreement shall become effective on the date of its entry and shall remain in effect until such time as the United States determines the District has complied with its obligations under the EEOA. The parties anticipate that the District will be able to reach compliance within three years, following its submission of the 2013-14 annual report and the reporting required by paragraphs 31 and 66 for the fall semester of 2014. Prior to the Agreement’s dissolution, the United States shall have 60 days from the receipt of the fall 2014 report to raise concerns or objections regarding the District’s compliance with this Agreement, and the enforcement mechanism in paragraph 71 shall apply. The date that counsel for the United States signs the Agreement shall be

considered the entry date. The signatories undertake this Agreement as a means of alternative dispute resolution to avoid litigation and for the purposes of judicial and governmental economy.

13. It is understood and agreed by the United States and the District that the execution of this Agreement shall not be construed as an admission by the District of any violations of the EEOA or of any liability for any alleged violations of the EEOA.

GENERAL REQUIREMENTS

14. As required by the EEOA, the District shall take appropriate action to overcome language barriers that impede equal and meaningful participation by ELLs in its instructional programs. *See* 20 U.S.C. § 1703(f).
15. In an effort to overcome ELLs' language barriers, the District has adopted an ELL Program consisting of ESL instruction by proficiency level taught by one or more itinerant ESL teachers, at least one of whom has or is making progress toward obtaining an ESL certification or endorsement; supported content instruction by core content teachers who have received the District's content-based ESL training pursuant to paragraph 19; and consultations between the ESL teachers and the ELLs' core content teachers.
16. This Agreement is tailored to the specific characteristics and needs of the District, particularly: its very small population of ELLs spread across several schools in a rural area; the limited availability of ESL certified or endorsed teachers in the area; its size and the geographic location of its schools; and its need for a combination of itinerant ESL teachers and core content teachers who receive training in content-based ESL and sheltering methodologies given the preceding characteristics.

SPECIFIC REQUIREMENTS

17. The District shall ensure that students who qualify for language acquisition services based on their ELS Level are identified as ELLs and provided adequate and appropriate ESL services tailored to their language needs in a timely and appropriate manner.
18. The District shall designate an ELL Coordinator, who may also have other administrative duties and job titles, to supervise and monitor the identification, instruction, exiting, and monitoring of ELLs and former ELLs in the District.

Instructional Staff

19. The District shall provide ESL training to all of its ESL teachers, including those who do not have ESL endorsements prior to the start of the 2011-2012 school year. The District shall provide training in content-based ESL and sheltering methodologies to (a) all general education teachers over the course of the 2011-12 school year, and (b) to core content teachers of each ELLs in future school years for the duration of this Agreement. The District also has agreed to provide annual training to its secretaries and administrators at the beginning of every school year regarding enrolling and educating ELL students. The District shall make every effort to assign ELL students to classrooms with teachers who have completed the District's ESL training.
20. The District shall ensure that all teachers of ESL instruction have: (a) an ESL certification or endorsement, or to the extent this is not practicable, (b) a provisional ESL certification or endorsement and are making consistent progress toward obtaining an ESL certification or endorsement within two years. If the District cannot secure enough teachers with ESL certifications or endorsements or provisional ESL certification or endorsements to provide all of the District's ELL students with ESL services, the District may use a certified language arts teacher (for grades 6-12) or a certified classroom teacher (for grades K-5) who has completed the ESL training required by paragraph 19 to provide ELL services to the most proficient ELLs (e.g., ELP Level 3-4). When an ESL position is filled by a long-term substitute by reason of necessity, the District shall ensure that this long-term substitute receives training regarding how to provide ESL instruction within 45 days of starting work.
21. By January 16, 2012, July 1, 2012, and July 1 of each year thereafter, the District shall submit its ELL-specific Professional Development Plan for the United States' review. Such plans shall include all mandatory and voluntary training pertaining to instructing ELLs. The plans shall include the details of each upcoming training, including the date(s), length, general description of content, attendees, and provider(s). The plans also shall include professional development for all regular education and special education teachers of ELLs in the form of oral and/or written instruction at least once each school year regarding working with current and recently exited ELLs and coordinating with ESL

teachers to identify and address any language barriers that may hinder current or recently exited ELLs from participating equally in general education and special education classes.

Identification of ELLs

22. For the 2011-2012 school year only, the District shall distribute its Home Language Survey (HLS) to every student in the District because in prior years the District had not distributed its HLS to all students. In 2011-2012, the District shall include the HLS in a packet with the school calendar that it provides to every student on the first day of school and shall require every parent/guardian to return a completed HLS with the form that the District requires to verify receipt of the calendar during the first week of school. The District shall ensure that school counselors follow up with parents who do not return a completed HLS.
23. The District shall ensure that all newly enrolling students who enter the District, whether they are students just starting school or transfer students from another District, receive an HLS immediately upon registration.
24. With respect to the obligations in paragraphs 22 and 23, if a parent/guardian is limited English proficient, the District shall employ its best efforts to provide the HLS in a language s/he understands or shall provide a qualified interpreter in that language to assist the parent/guardian in completing the HLS.
25. For any student whose parent/guardian responds “yes” to any of the three questions on the HLS, the District shall insure that such student is administered a valid and reliable test of English proficiency that assesses proficiency in all four language domains of listening, speaking, reading, and writing to determine eligibility for language acquisition services, which test shall be administered within 20 school days after any such response that occurs during the first month of the school year and within 15 school days if any such response occurs at any time thereafter.
26. The District shall ensure that students whose test results under paragraph 25 identify their ELS Levels in the 1-4 range are classified as ELLs and receive ESL instruction and supported content instruction pursuant to paragraphs 28-37 from trained teachers pursuant to paragraphs 19 and 20, and monitoring pursuant to paragraphs 42-47.

27. Students whose initial test results identify their ELS Level as 5 (Fluent) are not classified as ELLs. However, students whose initial test results identify their ELS Levels in the 1-4 range (and therefore classify them as ELLs) who later test as a Level 5 must receive monitoring pursuant to paragraphs 42-47 until they meet the exit criteria described in paragraph 64.

Instruction of ELLs

28. Every ELL student in ELP Levels 1-4 shall have a LEP Committee consisting of his or her ESL teacher, his/her homeroom elementary teacher or core content secondary teacher, a school administrator, and a parent/guardian. Each LEP Committee shall meet at least annually to determine the ELL service levels and accommodations necessary to meet each ELL's needs, and shall record the information required in an LEP Plan. (*See Exhibit A.*) The District's ELL Coordinator shall continue to endeavor to attend LEP Committee meetings to the extent practicable. Any teacher of an ELL or his/her parent who reasonably believes that the ELL is not receiving adequate or appropriate services may reconvene the LEP Committee at any time, but no more frequently than once each grading period.
29. Annual LEP Committee meetings shall take place within the following timeframes:
- a. With regard to ELL students who attended a school in the District in the previous school year, the LEP Committee shall meet within the first 15 school days following the start of the school year.
 - b. With regard to ELL students who are new to the District, the LEP Committee shall meet within 20 school days of the ELL's enrollment in the District.
30. Due to the small population of ELL students and the unique characteristics of the District identified in paragraph 16, ELL services to ELL students shall involve direct ESL instruction, supported content instruction by core content teachers who complete the ESL training required by paragraph 19, and consultations between the ESL teachers and the ELL's core content teachers. The District shall provide ELL services to each ELL student that are adequate and appropriate given the ELL's ELP Level, language needs, and other academic needs. The LEP Committee shall explicitly identify in each ELL student's LEP Plan any and all ELL services that the ELL will receive and include in the

LEP Plan (a) the names of the teacher(s) providing instruction and (b) the number of minutes of ELL services the ELL will receive each day and each week.

31. The District shall send the United States a copy of every ELL student's LEP Plan by the following deadlines:
 - a. For all ELL students in the District at the beginning of a school year, within thirty (30) calendar days of the first day of school.
 - b. For all ELLs who enroll after the start of the school year, within twenty (20) school days of that student's enrollment.
 - c. For ELL students whose LEP Committee changes their LEP Plan mid-year, within 7 school days of the date the new LEP Plan is finalized.
32. The United States has review and approval authority of each ELL student's LEP Plan to ensure the District is providing each ELL with adequate and appropriate ELL services, and if the United States objects to any Plan, it shall notify the District in writing. The District shall have 30 days to respond to the notice with a revised LEP Plan. If the District and the United States disagree regarding the content of any revised LEP Plan, the District and the United States will work together in good faith to resolve any disagreements for an additional 30 days, but if they are unable to reach agreement, the enforcement provisions of paragraph 71 shall apply.
33. In addition to the ELL services described in paragraphs 28-30, each ESL teacher shall also consult with each of their ELL student's core content teachers at least one time per grading period regarding the ELL student's identified needs and academic performance with the understanding that the lower the student's proficiency level, the more frequently consultations should be conducted. During each consultation the core content teacher shall identify:
 - a. the academic vocabulary that the ESL teacher should cover to facilitate the ELL student's access to the core content;
 - b. identify, and where needed model, instructional strategies to the core content teacher to render the content comprehensible to the ELL student; and
 - c. supplemental instructional materials to enable the student to meaningfully access the core content, and provide such materials when the ELL's needs require.

34. In order to facilitate collaboration between ESL teachers and core content teachers of ELLs and to allow ESL teachers to preview upcoming academic vocabulary with their ELLs, each core content teacher instructing an ELL student shall provide the ELL student's ESL teacher with a copy of his or her weekly written lesson plan prior to the week in which the lesson plan is taught.
35. For ELL students receiving all of their ELL services from a trained teacher pursuant to paragraphs 19, 20, and 29, the trained teacher providing the ESL services shall consult as often as needed, but no less than twice per month, with a certified or provisionally certified (including the teachers enrolled in the West Virginia ESL certification program) ESL teacher regarding the use of ESL methodologies and the topics identified in paragraph 33. A record shall be made of each consultation.
36. The ELL Coordinator shall collect and monitor all LEP Plans and shall ensure that identified ELLs are receiving adequate and appropriate services according to the provisions set forth in this Agreement.
37. If a District employee learns that any ELL with ELS Level 1-5 is not receiving adequate and appropriate ESL services, as required by this Agreement, the employee shall immediately notify the ELL Coordinator, and the District shall take reasonable steps to ensure that the ELL receives such services within 10 school days.

Opt Out ELLs

38. Any parent whose child is identified as an ELL pursuant to paragraphs 25-27 may refuse ELL services or opt out only after completing the District's *Request for English Language Development Program Withdrawal/Denial of Enrollment* form, attached hereto as Exhibit B.
39. Any parent whose child is identified as an ELL and is receiving ELL services may opt out of the District's ELL program only after completing the District's *Request for English Language Development Program Withdrawal/Denial of Enrollment* form. (See Exhibit B.)
40. The District shall not initiate any decision to opt out of ELL services. The District shall monitor all Opt-Out ELL students' progress at least three times per school year, in October, January, and May, using the form attached as Exhibit C (*see* paragraph 44), and

shall ensure that each such student is administered a valid and reliable English proficiency assessment in all four language domains at least once each school year to evaluate their level of English proficiency.

41. If the District learns through the monitoring process prescribed by paragraphs 40 and 42-47 that an Opt-Out ELL student is struggling in the classroom due to a language barrier, the District shall notify his or her parents, re-offer ELL services, and make and retain a record of this communication.

Monitoring Current and Exited ELLs and Evaluating Language Acquisition Services

42. The District shall identify all ELLs by their ELS Level and all former ELLs on all class rosters so that all teachers know the ELS Levels and former ELL status of their students.
43. The District shall continue to track ELLs' progress through the annual English language proficiency assessment results and the District's three Annual Measurable Achievement Objectives required by the No Child Left Behind Act.
44. For every ELL student in ELS Levels 1-5, the ESL teacher, or trained core content teacher, as appropriate, shall complete the appropriate section of the ELL student's *ESL/LEP Student Skills Matrix Record*, attached hereto as Exhibit C (the "white form"), in October, January, and May of each school year, as specified on the form. The teachers shall use the white form for ELL students in ELS Levels 1-5, including ELL students who are ELS Level 5 and receiving only monitoring, and including ELL students who are Opt-Outs pursuant to paragraphs 38-41. The ELL Coordinator shall collect and review all white forms and follow up with the appropriate teacher if the forms indicate any possible noncompliance with this Agreement or raise any questions about the adequacy or appropriateness of services.
45. For every former ELL student who has exited the program according to the procedures in paragraph 64, a general education teacher shall complete the *Monitoring Documentation of Former LEP Students*, attached hereto as Exhibit D (the "yellow form"). If the yellow form reveals that a former ELL is struggling in one or more subject areas, the teacher shall determine whether a language barrier is a reason that the student is struggling. For each student for whom the determination is made that a language barrier is a reason that the student is struggling, the LEP Committee shall convene and discuss whether to re-

enter the ELL student in the ELL Program within 30 days. The LEP Committee shall document any changes in service level on a new LEP Plan. The ELL Coordinator shall collect and review all yellow forms and follow up with the ESL teacher the forms indicate any possible noncompliance with this Agreement or raise any questions about the adequacy or appropriateness of services. The District shall use (a) standardized tests; (b) the assessments provided to all students in the District; (c) grades; (d) white forms completed pursuant to paragraph 44; and (e) the information gathered from consultations between and among teachers described in paragraphs 32-34 to monitor the progress of ELLs in ELS Levels 1-5. When these assessments and monitoring reports reveal that an ELL in ELS Levels 1-5 is struggling in one or more subject areas, the LEP Committee shall determine whether a language barrier is a reason that the student is struggling. For each student for whom the determination is made that a language barrier is a reason that the student is struggling, the LEP Committee shall convene and adjust the direct ESL service level being provided to address the needs of the student (*e.g.*, additional small group/pull out, additional assistance through intervention programs, etc.) within 30 days. The LEP Committee shall document such changes in service level on a new LEP Plan.

46. The District shall disaggregate and monitor the following data by current and former ELLs over the term of this Agreement to evaluate whether the District's ELL services are overcoming ELLs' language barriers within a reasonable period of time and enabling their meaningful participation in all aspects of the District's educational program, including but not limited to the current and former ELLs': performance on standardized tests (*e.g.*, the West Virginia Educational Standards Test); rates of ELLs exiting from ELL services by school; enrollment in honors, special education, and enrichment programs (*e.g.*, Advanced Placement and gifted classes); retention-in-grade rates; and graduation rates.
47. To monitor appropriate implementation of its ESL program from the first step of registering an ELL to the final step of evaluating whether the ESL program is overcoming ELLs' language barriers within a reasonable period of time, the District shall establish clear guidelines for each part of its ESL program in an updated ESL handbook. This handbook shall be consistent with the terms of this Agreement and shall be

distributed to all employees who play a role in the ESL program. The handbook shall include: identification of and testing procedures for ELLs, minimum service guidelines, training and professional development requirements for all teachers, and protocol for monitoring Level 5 ELLs, Opt Out ELLs, and former ELLs. The District shall submit its revised ESL handbook to the United States for review by January 2, 2012. In the event that the District revises its ESL handbook during the period of this Agreement, the District shall submit a copy of the proposed revision to the United States for review at least 45 days prior to implementing such revision, and the United States shall inform the District if it has any concern(s) regarding the proposed revisions within 30 days.

Materials

48. The District shall provide instructional materials for ELLs that are appropriate with respect to the ELLs' ELP levels, ages, grades, and subject areas of instruction. These materials shall include at least ESL and English Language Development materials for ESL classes that are appropriate for the ELP levels and ages of the enrolled ELLs.
49. The District shall provide an inventory of its ELL materials by school, subject, and grade by January 2, 2012, and thereafter on September 1 of each year of this Agreement, highlighting any new materials acquired since the prior year's inventory.
50. The District shall ensure that each school provides ESL materials in quantities that are sufficient for the number of ELLs enrolled in that school.

Special Education

51. The District shall provide ESL services to all ELL students, including students who are also eligible for SPED services as required by the IDEA and/or state regulations. The District shall not deny ESL services to SPED students who qualify for ESL services and shall not deny SPED services to students who are ELLs and qualify for SPED services.
52. The District shall provide both SPED services and ELL services to each SPED ELL in a manner appropriate to the student's individual needs. The District shall not deny any ELL student ESL services solely due to the nature or severity of the student's disability.
53. The District shall provide timely written notice to parents/guardians of dually identified SPED ELLs that their children are eligible for both ESL and SPED services.

54. When an ESL teacher is assigned to work with a SPED ELL or an ELL who is referred for a SPED evaluation, the ESL teacher shall participate in decisions involving the SPED services, including but not limited to, evaluating whether the ELL requires a SPED evaluation, whether the ELL qualifies for SPED services on the basis of a disability and not on the basis of his/her ELL status, developing and revising the ELL's IEP, and participating in the ELL's reevaluation and his/her IEP meetings.
55. Consistent with applicable federal law and regulations, all IEPs of ELLs shall consider the language needs of the ELL as such needs relate to the ELL's IEP.
56. The District shall record on both the IEP and the LEP Plan the service delivery model through which ELL services are provided to each SPED ELL and the duration of the services (*e.g.*, 45 minutes of ESL pull-out instruction per day and supported math, science, and social studies).
57. The District shall ensure that the Eligibility Committee for SPED ELLs ensures that the ELL's limited English proficiency is not determinative of eligibility for SPED services. Toward that end, the District shall evaluate ELLs in their native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so. The District shall ensure that evaluations of SPED ELLs indicate: 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.

Translation and Interpreter Service

58. The District shall continue to annually update its list of all available personnel in each building who speak a language other than English and can serve as interpreters or translators with their current phone numbers, building location, and email addresses. The District shall maintain this list with each building principal and registrar. The District shall ensure that employees at each school are instructed to contact the building principal or registrar to obtain translation services. The District shall ensure that building principals and registrars are advised that a school may request the assistance of

employees at other schools to meet the translation and interpreter needs of ELLs and their parents.

59. Annually, the District shall train administrators and teachers regarding the essential information¹ that should be translated and the communications that should be interpreted.
60. The District shall make available to all appropriate personnel a list of the District-level and school-level general notice documents that have already been translated, with electronic access to such documents, and shall enable school personnel to include school-specific notices in electronic form that may be of use to other schools to meet their translation needs.
61. The District shall ask all parents/guardians of current and former ELLs in writing (in the parents'/guardians' native language when needed) whether the parents/guardians require written translations or oral interpretation of District-level and school-level communications, and if so, to specify the language(s) needed. For parents/guardians of current and former ELLs speaking low incidence languages, the District shall ask this question at least orally in a language the parents/guardians understand. The District shall enter the languages needed in its student information system so that they are readily accessible to administrators and teachers.
62. Using the information required by paragraph 61 above, the District shall employ its best efforts to ensure that all written communications distributed at the District level and all documents containing essential information distributed at the school level for which a

¹ "Essential information" includes, but is not limited to: (a) school handbooks; (b) information relating to special education matters arising under the IDEA or Section 504 (*e.g.*, IEP or 504 meetings); (c) report cards and other academic progress reports; (d) information provided to parents/guardians during the disciplinary process; (e) requests for parent permission for student participation in district/school sponsored programs and activities; (f) promotional materials and announcements distributed to students that contain information about district/school activities for which notice is needed to participate in such activities (*e.g.*, testing, school performances, activities requiring an application, parent-teacher conferences, open houses); (g) documents concerning enrollment or registration; (h) documents concerning academic options and planning; (i) documents concerning ELL identification procedures requesting a student's language background and a parent's preferred language of communication, and opting out of ELL services; (j) information related to public health and safety; and (k) any other written information describing the rights and responsibilities of parents or students and the benefits and services available to parents and students.

parent/guardian requests translation are either translated into the parent/guardian's primary language or that an oral interpretation is provided in the parent/guardian's primary language. The decision whether to provide a written translation or an oral interpretation of a document shall be at the District's discretion given its specific circumstances, including those identified in paragraph 16. The District shall provide oral interpretation 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.

63. 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.

Exiting and Reentering ESL Services

64. Unless a student's parent affirmatively opts him or her out of the ELL program pursuant to paragraphs 38-39, the District shall not discontinue the ELL services required by paragraphs 28-37 unless and until the ELL demonstrates English proficiency in all four domains based on valid and reliable criteria, including at least a valid and reliable English proficiency assessment. For the 2011-2012 year, the State of West Virginia requires that an ELL (a) score above a level five on the WESTELL for two consecutive years, (b) score at mastery level or above on the West Virginia Educational Standards Test (WESTEST), Reading Language Arts Assessment (grades 3-8 and 10) or Reading Language Arts end of course exams (grades 9 and 11), or (c) score at mastery level or above on the Alternate Assessment.
65. If, pursuant to the monitoring procedures required by this Agreement, the District determines that a Level 5 ELL student is struggling in one or more subjects, the District shall convene the student's LEP Committee, and if the Committee determines that a language barrier is a factor for the difficulty the student is having and that the student would benefit from direct ESL services and/or language support in the subject(s) of difficulty, the District shall reenter the ELL into direct ELL services within 30 days as detailed in paragraphs 28-37.

ANNUAL REPORTING TO THE UNITED STATES

66. The District shall provide to the United States the following data for each ELL student enrolled in the District:
- a. Copies of standardized test scores, including but not limited to the WESTELL and the WESTEST, within fifteen (15) calendar days of receiving them;
 - b. Copies of all grades and/or progress reports within fifteen (15) calendar days of their issuance;
 - c. Copies of annual LEP Plans within thirty (30) days of the start of school each year pursuant to paragraph 31;
 - d. Copies of any LEP Plans revised mid-year within seven (7) calendar days of revision pursuant to paragraph 31; and
 - e. Copies of any LEP Plans for new students enrolling mid-year within twenty (20) calendar days of the ELL's enrollment pursuant to paragraph 31.
67. The District shall provide to the United States annual reports detailing its efforts to comply with the provisions of this Agreement. The District shall submit the annual reports outlined herein each year by July 15. 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:
- a. A list of all ESL teachers and long-term substitutes and all other teachers who provided ELL Services to a student pursuant to the requirements of any such student's LEP Plan, including for each teacher their school, grade, language(s) they speak, certification(s) or endorsement(s), including any progress toward certification(s) or endorsement(s), and any ELL-related training provided inside of and outside of the District by title, date, and provider of the training;
 - b. 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 (*e.g.*, all 7 ESL and 10 special education teachers in grades 9-12);
- c. The number of students by school, grade, native language, and disability (if any) who were exited from the District's ELL program, and the basis/bases for exit for any SPED ELL student;
 - d. Copies of all completed Opt-Out forms (*see* Exhibit B);
 - e. Copies of completed white forms used to document District monitoring of ELS Levels 1-5 students and Opt Out ELLs (*see* Exhibit C);
 - f. Copies of completed yellow forms used to document District monitoring of former ELL students (*see* Exhibit D);
 - g. Records of all consultations conducted pursuant to paragraph 35;
 - h. The number of former ELLs by school, grade, and native language who were re-entered into the District's ESL program;
 - i. A copy of the current District's ESL Handbook;
 - j. An annual updated inventory of the District's ESL materials;
 - k. A hard copy of the District's employee translator and interpreter list as well as the District's outside translator and interpreter list required by paragraph 58; and
 - l. Any other information that the District believes will be helpful.

If the United States believes that it needs the following information to accurately assess the District's efforts to comply with the provisions of this Agreement, the District shall provide it within 30 days after receipt of a written request by the United States:

- a. For each school, the number of special education teachers and aides with ESL/ELD or bilingual training and/or certification(s)/endorsement(s), noting the type of training and/or certification(s)/endorsement(s), and the foreign language(s) that the teacher or aide speaks fluently; and
- b. The number and percentage of (i) ELLs, (ii) former ELLs, and (iii) never-ELLs by grade and native language who: (a) were referred for special education services, (b) were found eligible for such services; and (c) received such services.

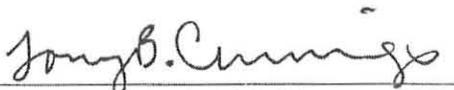
ENFORCEMENT

68. The District shall maintain records of all information pertinent to compliance with the terms of this Agreement and shall provide such information to the United States upon request. The United States and the District agree that, as of the date of this Agreement, litigation is not “reasonably foreseeable” concerning the matters described herein. To the extent that the United States previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described herein, the United States is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by this Agreement. 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 or any past violations of the EEOA not covered by this Agreement. This right includes speaking directly, without District counsel, with District employees who are not administrators and have questions, concerns, or other information to raise with the United States regarding the District’s ELL obligations under the EEOA and this Agreement. The District acknowledges that the United States, through its representatives and/or any consultant or expert it may retain, has the right to conduct an on-site review of the District’s schools to evaluate compliance with the terms of this Agreement upon giving reasonable notice and consultation with the District to minimize any disruption to the education process in the schools.
69. 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 District and the United States shall meet within 15 days of any such decision to determine whether the Agreement should be revised or supplemented in response to the court's decision.
70. The United States and the District shall make good faith efforts to resolve any objections pertaining to this Agreement, and if the parties are unable to reach a resolution within 60 days, the United States may initiate judicial proceedings to enforce the terms of the Agreement and the EEOA.

71. The District understands and acknowledges that in the event of a breach by the District of this Agreement, the United States may initiate judicial proceedings regarding such breach to enforce the terms of the Agreement and the EEOA.
72. The following signatures indicate the consent of the parties to the terms of this Agreement.

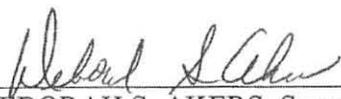
For the United States:

THOMAS E. PEREZ
Assistant Attorney General


ANURIMA BHARGAVA
EMILY H. MCCARTHY
TOREY B. CUMMINGS
U.S. Department of Justice
Civil Rights District
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Fax: (202) 514-8337

Date: 1.31.12

For the Mercer County School District:


DEBORAH S. AKERS, Superintendent
1403 Honaker Ave.
Princeton, WV 24740
Phone: (304) 425-3910
Fax: (304) 425-5844

Date: 1/30/12