

**Settlement Agreement**  
**Between**  
**the United States of America**  
**and**  
**Nashua School District**

## PURPOSE

Nashua School District (the “District” or the “Board”) agrees to comply fully with this Settlement Agreement (“Agreement”) to address and resolve noncompliance with Section 1703(f) of the Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1701 *et seq.* (“EEOA”). The EEOA requires the District to take “appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.” 20 U.S.C. § 1703(f).

In July 2019, the United States Department of Justice (“United States”) opened an investigation into the Board’s program for English Learner (“EL”) students. On March 26, 2021, following a full review, the United States notified the Board that aspects of the District’s EL programs and practices do not comply with Section 1703(f) of the EEOA. Specifically, the Board: (1) fails to provide sufficient EL services to hundreds of EL students; (2) lacks enough teachers certified in English as a Second Language (“ESL”) to staff its EL programs adequately; (3) denies EL students the ability to participate meaningfully in their core subjects by failing to train their teachers on how to instruct EL students; (4) fails to adequately train principals to evaluate teachers of ESL and sheltered instruction; (5) lacks sufficient curricula and instructional materials to implement its EL program; (6) does not communicate adequately with Limited English Proficient parents about school-related programs and activities; and (7) does not adequately monitor the academic progress of its former EL students.

The Board and the United States share the goal of ensuring that the District’s EL students receive the instruction and support they need to become proficient in English and to participate equally in school. The parties enter into this Agreement as a means of alternative dispute resolution to avoid litigation and to promote judicial and governmental economy. The Board agrees to implement the remedial measures in this Agreement to resolve the noncompliance that the United States identified in its investigation. Where the District has already initiated remedial measures, this Agreement memorializes them. The Agreement’s effective date will be the date when both parties have signed the Agreement. The Agreement will remain in effect for three full school years after the effective date, subject to Paragraphs 39-45 below.

## DEFINITIONS

- **Core Content** refers to elementary and secondary math, science, social studies, and English/language arts (e.g., an English, reading, or writing class).
- **Days**, as used in this Agreement, means calendar days except that if a deadline under this Agreement occurs on a weekend or holiday, the due date will be the next business day.
- **English Learner or EL students** are students who require assistance to overcome language barriers that impede their equal participation in the District’s instructional programs.
- **English Language Proficiency** refers to a student’s ability to read, write, speak, and understand the English language as determined by the student’s scores on a valid and reliable English language proficiency assessment of each of the four language domains of speaking, listening, reading, and writing.

- **English as a Second Language or ESL** is direct, explicit instruction about the English language that incorporates a systematic and developmentally appropriate approach to teaching language to EL students. ESL instruction addresses the listening, speaking, reading, and writing standards in the World-Class Instructional Design and Assessment (“WIDA”) English Language Development Standards adopted by the New Hampshire Department of Education.
- **ESL-Certified Teacher** refers to a teacher who holds an ESL teaching credential from the New Hampshire Department of Education. ESL is taught by an ESL-Certified Teacher under this Agreement.
- **Former EL student** refers to a student who was formerly an EL student but subsequently met valid and reliable criteria for exiting the EL program. These criteria include demonstrating proficiency on a valid and reliable assessment of English Language Proficiency in all four language domains of reading, writing, speaking, and listening.
- **Limited English Proficient Parents** refers to parents who have limited English proficiency in one or more of the four language domains of speaking, listening, reading, and writing.
- **Major Languages** refers to the District’s most commonly spoken languages among EL students other than English, and includes Spanish, Portuguese, and any languages spoken by 50 or more parents in the District based on parental responses to questions on the home language survey or other registration materials each school year.
- **Opt-Out EL student** refers to an EL student whose parents opted out of instructional services for EL students by signing a voluntary and informed waiver of such services in a language the parents understand.
- **Newcomers** refers to any foreign-born students arrived to the United States within the last two years. These individuals could have had limited or no formal education in their native countries.
- **Qualified Interpreter and Qualified Translator** means an individual who, whether a paid District employee, contractor, or volunteer (subject to the restrictions in Paragraph 29, below): (a) meets the qualifications generally accepted in the field of oral interpretation and/or written translation; (b) is fluent in the languages in which the individual is communicating; (c) has a demonstrated competence to interpret and/or translate; (d) is trained in providing the interpretation or translation requested by the District; (e) is sufficiently knowledgeable in both languages of any specialized terminology needed to provide accurate interpretation or translation (e.g., special education terms); and (f) is trained in the ethics of interpretation and/or translation (e.g., the need for accuracy and confidentiality).
- **Sheltered Content Instruction** refers to a method for teaching EL students grade-level core content in English by integrating English language and literacy development into content area instruction. Sheltered Content Instruction systematically incorporates an array of teaching strategies that make core content classes more comprehensible and accessible to EL students while promoting their English language development. These strategies will include, among others: teaching to language objectives that help EL students achieve the content objectives;



building and activating background knowledge; explicitly teaching academic vocabulary; scaffolding instruction; differentiating instruction for EL students; grouping EL students by their English proficiency level; using supplementary and adapted materials, texts, and visual displays; implementing cooperative learning and group work; offering primary language support; providing comprehensible input and clarification; promoting academic discussions; teaching content-area reading and writing skills; using formative and summative assessments of language and content objectives with EL accommodations; and giving proficiency-level appropriate feedback on EL students' language use and demonstration of content knowledge.

### **GENERAL REQUIREMENTS**

1. The District will take “appropriate action to overcome language barriers that impede equal participation” by students in its instructional programs. 20 U.S.C. § 1703(f).

### **SPECIFIC REQUIREMENTS**

#### **Identification and Placement of EL Students**

2. During the new student registration process, the District will continue to require all parents<sup>1</sup> to complete a home language survey and the District's emergency contact form, which will ask parents whether they need an interpreter or translated information about District and school programs and activities. The District will translate the home language survey into the five most common languages of its EL students (i.e., Spanish, Portuguese, Swahili, Telugu, and Vietnamese) and will make these translations readily available online and at registration sites. For Limited English Proficient parents who speak other languages, the District will provide a qualified interpreter in those languages to help parents complete the home language survey.

3. To properly identify EL students, the District will continue to administer a valid, reliable, and grade-appropriate English Language Proficiency assessment in all four language domains (reading, writing, speaking, and listening) to all K-12 students whose home language survey indicates that a language other than English is spoken at home or by the student, or if there is any other reason to believe that the student is not proficient in English. The District may assess incoming kindergarteners' English Language Proficiency only in listening and speaking in the fall semester.<sup>2</sup>

4. The District will administer the English Language Proficiency assessments and will place all K-12 students identified as EL students in an appropriate EL program within the first 20 days of the school year. If a student enrolls more than 20 days after the start of school, the District will assess and place the student within ten days of enrollment.

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<sup>1</sup> The term “parent” in this Agreement includes a legal guardian or other person who is legally responsible for the student's welfare.

<sup>2</sup> Consistent with WIDA guidelines, students participating in the District's pre-kindergarten programs will be assessed no earlier than six months prior to the start of their kindergarten year.



5. Within 60 days of the Agreement's effective date, and then on an annual basis, the District will train all personnel involved in registration and enrollment on its EL identification and placement policies and procedures, including those in Paragraphs 2-4.

### **Provision of EL Services and Access to the Core Curriculum**

6. The District will provide all EL students with at least one daily period<sup>3</sup> of ESL taught by an ESL-Certified Teacher unless the student's parent makes a voluntary and informed decision in writing to opt out of ESL services.<sup>4</sup> The District will provide an additional daily period of ESL to all newcomer and EL students with an English proficiency level of 1 or 2.<sup>5</sup>

7. The District agrees that ESL is a core subject for EL students. The District will provide daily ESL to EL students in addition to other core subjects, except that the District may provide ESL through the core literacy class (such as a reading, writing, or English language arts class) for EL students with English Language Proficiency levels of 4 or 5. The District may only provide ESL through the core literacy class if the class is: (a) taught by an ESL-Certified Teacher who is also certified in English Language Arts and provides explicit ESL to the EL students; or (b) co-taught by an ESL-Certified Teacher and a teacher certified in English Language Arts who have co-planning time together, and the ESL-Certified Teacher provides explicit ESL to the EL students.

8. The District will group EL students for ESL by (a) their English Language Proficiency level within a single grade or vertically across grades (limited to two consecutive grades at the elementary level) or (b) two consecutive English Language Proficiency levels within a single grade.

9. To ensure that EL students can meaningfully participate in their grade-level core content instruction, the District will provide all EL students with Sheltered Content Instruction in language arts, math, science, and social studies. Teachers will provide this instruction primarily in English and use effective sheltering strategies to make lessons comprehensible to EL students while promoting their English language development, consistent with the definition of Sheltered Content Instruction above. For EL students at levels 1 and 2, Sheltered Content Instruction classes may be EL-only or integrated with non-EL students. For EL students at levels 3 and higher, Sheltered Content Instruction classes will be integrated with non-EL students.

10. The District will require core content teachers to complete a monitoring form each quarter, so that the District can monitor the academic progress of each opt-out EL student and assess the student's ability to participate meaningfully in the regular education program without EL services. When an opt-out EL student is not progressing as expected, the District will notify

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<sup>3</sup> A "period" is at least equivalent to the time allocated for core content subjects. Schools that are served by an itinerant ESL teacher will ensure that EL students receive the weekly equivalent of a daily period of ESL (e.g., if a period is 45 minutes, the weekly equivalent would be 225 minutes).

<sup>4</sup> Opt-out EL students remain entitled to all appropriate EL accommodations on classroom and standardized assessments and may not opt out of the annual English Language Proficiency assessment.

<sup>5</sup> All requirements in this Agreement apply equally to the District's virtual and alternative school(s).

the student's parents and recommend ESL services in a language the parents understand. The District will provide the notice and the opt-out monitoring form using a Qualified Translator for the Major Languages and a Qualified Interpreter for other languages. The District will produce the notices and signed opt-out monitoring forms to the United States upon request.

11. So that teachers know which students need language assistance, all electronic databases and class rosters will note the English Language Proficiency level, status (e.g., active, opt-out, or in monitoring), EL services, and EL accommodations for all current and former EL students. The District will review class rosters at least once each semester to ensure that all EL students receive the EL services required by this Agreement. If the District learns that an EL student is not receiving EL services consistent with this Agreement, the District will ensure that the EL student receives appropriate services consistent with this Agreement within ten days.

### **Staffing and Professional Development**

12. The District will actively recruit ESL-Certified Teachers for relevant teaching positions (including long-term substitutes) to ensure sufficient staffing to provide all of its EL students with daily, appropriately grouped ESL. Within 90 days of the Agreement's effective date, the District's EL Department will provide a recruitment plan to the United States for review and approval. The District's notices regarding teacher vacancies will express a preference for candidates with the New Hampshire ESL credential. District employees responsible for the recruitment and hiring of teachers for the EL programs and special education personnel will meet annually to discuss ways to improve the recruitment, hiring, and assignment of applicants who are ESL-Certified. As soon as practicable but not later than June 30, 2021, the District will allocate sufficient staff and other resources to the EL Department so that it can fulfill all of its obligations under this Agreement.

13. The District will ensure that every ESL class is taught by an ESL-certified teacher.

14. The District will ensure that teachers of Sheltered Content Instruction are certified in the content area and (a) have an ESL credential, (b) have been trained to use effective techniques to shelter content and promote EL students' English language development, as set forth in Paragraph 15.a below, or (c) are "on track" to complete the training required by Paragraph 15.a within three years as set forth in Paragraph 17.

15. Within 90 days of the effective date of this Agreement, the District will develop and send to the United States for review and approval a professional development plan that will:

- a. Provide core content teachers of EL students who lack an ESL credential adequate training on effective strategies for providing Sheltered Content Instruction for EL students and promoting their English language development in all four language domains, consistent with the definition of Sheltered Content Instruction above.
- b. Provide each teacher, annually, with at least ten hours of in-person training on effective sheltering and English language development strategies and at least five hours of in-classroom support on using those strategies. The District will ensure that the instructor(s) of the in-person training (or ESL-Certified Teacher(s) with at least

three years of experience using such strategies effectively with EL students) provides the in-classroom support. This support will include coaching in the form of co-planning sheltered content lessons for EL students, observing the lessons in class (with modeling as appropriate), and sharing constructive feedback on the observed lesson.

- c. Provide training on practical strategies appropriate for planning, delivering, and adapting content for EL students within the context of standards-based lesson planning, instruction, and assessment. The training will provide teachers with strong modeling of such strategies and sufficient opportunities to practice them and receive feedback on their use of such strategies.

16. The District will provide a copy of its proposed training materials to implement the first year of the plan. The District will submit all training materials to implement the remaining requirements of the plan at least 90 days before the training session at which those materials are to be used. The United States will provide feedback to the District within 60 days of receiving the plan. The District will work cooperatively to produce a professional development plan and training materials that secures the United States' approval.

17. To be considered "on track" to complete the professional development described under Paragraph 15 within three years, core content teachers of EL students who lack an ESL credential will receive ten hours of training on effective sheltering and English language development strategies and five hours of in-classroom support on using those strategies per year.

18. To secure enough teachers who can provide the Sheltered Content Instruction and ESL required by this Agreement, the District will require all core content teachers who are new to the District and not ESL-Certified to become ESL-Certified or to complete the training required by Paragraph 15 within three years of their hire.

19. ESL and other teachers who are assigned to co-teach EL students will (a) have weekly scheduled common planning time with their co-teacher and (b) receive training on how to co-teach classes to EL students prior to being assigned to co-teach EL students.

20. The District will develop a classroom observation teacher feedback tool for use by instructional coaches, principals, and any other administrators who evaluate teachers of EL students. Administrators and instructional coaches will use the feedback tool to evaluate teachers' implementation of ESL, co-teaching strategies, and Sheltered Content Instruction in core content classes. Within 90 days of the Agreement's effective date, the District will provide its proposed classroom observation teacher feedback tool to the United States for review and approval, and the United States will provide its feedback to the District within 60 days thereafter. Within 60 days of the United States' approval of the tool, the District will train its administrators and instructional coaches on using the tool.

21. The District will provide instructional coaches, principals, and any other administrators who evaluate teachers of EL students with annual training regarding their responsibilities under this Agreement. This training will address how to identify and support effective ESL, ESL co-teaching, sheltering teaching strategies in classroom instruction, and how



to use the classroom observation tool described in Paragraph 20 to provide constructive feedback to teachers during and/or after classroom walkthroughs. The District will provide its proposed administrator training to the United States for review and approval within 90 days of the Agreement's effective date and annually thereafter by October 1; the United States will provide its feedback to the District within 60 days.

### **EL Access to Special Services**

22. All provisions of this Agreement apply equally to EL students with disabilities. No EL student with a disability will be denied ESL instruction solely because of the nature or severity of the student's disability; nor will that student be denied special education services because of that student's EL status.<sup>6</sup> The District will notify parents of EL students with disabilities in writing in a language they understand that their child is entitled to both ESL instruction and special education services.

23. The District will train its special education, core content, and ESL-Certified Teachers who work with EL students with disabilities on how to provide services to EL students with disabilities, particularly disabilities affecting language acquisition and written and oral language processing and expression. This training will include at least one annual joint planning meeting with special education, core content, and ESL-Certified Teachers at each school to discuss the procedures for timely identifying and serving EL students with disabilities with ESL and special education services. Each school also will maintain a list of staff members who have knowledge and experience regarding EL needs, services, and language and cultural backgrounds, and the intersection of EL and special education services. To the extent practicable, the District will ensure that at least one person from this list is present at all special education meetings for EL students.

24. The District will ensure that IEP teams consider the language needs of EL students with a disability as such needs relate to their IEPs. The District will inform all special education staff that IEP and Section 504 team meetings involving eligibility determinations, determining or changing services, and revaluations for each EL student with a disability must include an ESL-Certified Teacher who: (a) is knowledgeable about EL services and EL students' needs, language background, and cultural background; (b) has received training regarding their responsibilities under this Agreement; and (c) whenever possible, is familiar with the EL student's needs. For all other IEP and Section 504 team meetings, the District will secure at least the input of this ESL-Certified Teacher if they cannot attend the meeting. If, prior to any IEP or Section 504 team meeting, the included ESL-Certified Teacher is not already knowledgeable about the student, the District will require the teacher to access and review the student's files prior to the IEP or Section 504 meeting.

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<sup>6</sup> The District will provide ESL services unless it receives a valid waiver from parents or, in rare cases, a student's Individualized Education Program ("IEP") team determines and documents in the student's IEP that the student's disability is so severe that it would be unreasonable to expect that the student will ever be capable of using or understanding language. The student's parents must be informed in writing and in person in a language they understand, using Qualified Interpreters and Qualified Translators.

## **Curriculum and Resources**

25. The District will provide adequate resources, instructional materials,<sup>7</sup> and dedicated classroom/office space at all schools to implement its EL program. This includes providing EL students with access to ESL and core content materials appropriate to their ages and English Language Proficiency levels, as well as sufficient technology to access instructional materials at home and in the classroom (e.g., 1:1 devices for EL students if provided to non-EL students or otherwise needed to implement the EL program). The District also will consider the needs of EL students during its core content textbook and curriculum review and adoption process. For all instructional materials for EL students, the District will ensure that teachers of ESL and Sheltered Content Instruction are adequately trained on how to use these materials before school starts each year of this Agreement. Within 60 days of this Agreement's effective date, the District will inventory its existing materials and review its policies for selecting textbooks and other instructional materials.

26. The District agrees that ESL is a core subject for EL students that warrants a curriculum similar to that of other core content courses. As it already does for its elementary and middle school programs, the District will develop or adopt a grade 9-12 ESL curriculum with an appropriate scope and sequence for high school EL students. The District will submit all proposed curricula to the United States for its review and approval within 60 days of the Effective Date of this Agreement. The District will prioritize development or adoption of its high school ESL curricula, which will be implemented no later than August 31, 2021. The District will incorporate training on the new curricula and materials into teacher professional development days and professional learning communities before implementation, and on an ongoing basis thereafter.

## **Communications**

27. To identify Limited English Proficient parents who need language assistance, the District will ask parents to indicate on the home language survey and/or the emergency contact form whether they need school- and district-level communications in a language other than English through interpreters and translations. The District will make information about parents' language needs readily accessible to administrators and teachers through the student information system. The District will train its employees to review this information before scheduling meetings with parents and sending written communications to parents. During this training, the District will explain how to access Qualified Interpreters, including how to access the District's telephone-based interpretation vendor, and accurate translations of essential information into the District's Major Languages from Qualified Translators. The District also will add a statement to its registration packet about the availability of interpretation in multiple languages and how to request an interpreter or a translation on its online enrollment website, District's homepage, and all individual school websites. The District will prominently display a copy of this statement—translated into the five most common languages of Limited English Proficient parents—in the

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<sup>7</sup> Materials will include age- and grade-appropriate ESL materials, core content materials that include an EL component or supplement, supplemental materials to make vocational courses accessible to EL students, and native language materials.

front office of each of its schools and in any other public location where parents enroll or register students in the District's schools.

28. The District agrees to give Limited English Proficient parents access to school-related information provided to other parents as follows:

- a. Qualified Translators will accurately translate notices or documents containing essential information<sup>8</sup> that are distributed at the District or school level into the District's Major Languages, and the District will distribute such notices and documents in a timely manner to parents speaking those languages; and for parents speaking languages other than the Major Languages, the District will use Qualified Translators or Qualified Interpreters to timely communicate such notices or documents to these parents in a language they understand, either upon request or if the need for language assistance becomes apparent to the District.<sup>9</sup>
- b. A Qualified Interpreter will provide oral communications of essential information in a language the parent understands without undue delay. The District will provide oral interpretation or accurate written translation of other school-related information by a Qualified Interpreter or Qualified Translator upon receiving reasonable, specific requests for such information from Limited English Proficient parents.

29. All District or school-provided interpreters and translators will be Qualified Interpreters and Qualified Translators. Except in an emergency, the District will not use family or friends of Limited English Proficient parents (who do not otherwise meet the definition of Qualified Interpreters or Qualified Translators), students, or Google Translate for interpretation of District- or school-generated documents or for any other translation or interpreter services. If there is an emergency and no Qualified Interpreter or Qualified Translator is available, the District will follow up with the parent in a timely manner to communicate the information through a Qualified Interpreter or accurate translation produced by a Qualified Translator. If instructional staff are providing Qualified Translator or Qualified Interpreter services, the District will ensure that such duties do not interfere with the staff's instructional and monitoring duties with respect to current and former EL students.

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<sup>8</sup> "Essential information" includes, but is not limited to: (a) report cards and other academic progress reports; (b) documents concerning academic options and planning; (c) documents concerning enrollment or registration; (d) documents concerning screening procedures requesting a student's language background, a parent's preferred language of communication, and the process for refusing all or only specific EL services; (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 school and District activities for which notice is needed to participate in such activities (e.g., testing, co-curriculars activities requiring an application, parent-teacher conferences, open houses); (g) special education documents, including IEPs, Behavior Intervention Plans, and Functional Behavioral Assessments; (h) information about student discipline; (i) parent handbooks; (j) information related to public health and safety; and (k) any other written information describing rights/responsibilities of parents or students and benefits/services available to parents and students.

<sup>9</sup> The translation obligation applies to essential information wherever it is made available, including on the District's websites and online enrollment platform.



30. The District's EL Department will develop written materials for parents that provide clear, accurate, and current information about its EL program, including, but not limited to: (a) the amount of daily ESL instruction provided; (b) whether the ESL is provided through a push-in, pull-out, or co-taught model; and (c) whether classes in the EL program count as core credits or electives toward graduation requirements. The District will accurately translate these materials into the Major Languages and will provide them to all parents prior to an initial EL program placement whenever possible and within 15 days of an EL program placement. The District will offer a Qualified Interpreter to explain items (a)-(c) above to Limited English Proficient parents of other languages.

31. To ensure that all schools can easily access translated information, the District will maintain and provide central office and school-based employees with electronic access to an accurate and current inventory of translated District-level and school-specific documents, as well as instructions for requesting translations of additional documents. The District will continue to expand the inventory to include translations of all District-level and school-level essential information in the Major Languages. To assist all schools in communicating with Limited English Proficient parents, the District will:

- a. Provide principals with a list of the names, languages, and contact information for all District employees, contractors, and others who are Qualified Translators and Qualified Interpreters. The principals will maintain the list in a central location within their schools and will ensure school staff are informed on how to access the list.
- b. Include the policies and procedures regarding access to Qualified Translators and Qualified Interpreters in the District's annual training for administrators and teachers.
- c. Ensure that school clerks and any other District employees responsible for communicating with Limited English Proficient parents regarding EL students' school selection, enrollment, and EL services have direct access to and receive appropriate training concerning the use of the District's telephone-based interpretation vendor.

## Program Monitoring and Evaluation

32. The District will monitor the EL services and English Language Proficiency progress of current EL students and the academic performance of current and former EL students through its electronic student information system(s). To facilitate its monitoring of current and former EL students, the District will maintain the following information electronically and in hard copy in each student's permanent educational record: the home language survey, whether the parent needs translations and/or an interpreter; family history forms; the EL student's initial and annual English Language Proficiency assessment levels in all domains; and the EL student's specific ESL services (e.g., a daily period of standard ESL). To permit evaluations of its EL programs over time, the District will maintain in its student database the following data in separate fields: all initial screener and annual English Language Proficiency assessment scores; standardized test scores; retention, drop out, and graduation data; whether the student is a long-term EL student (i.e., identified as an EL student for six years or more), an opt-out EL student, a former EL student, or a newcomer EL student; the year that the student was designated as an EL student; school and EL program in which the EL student participated; whether the student has a disability (i.e., 504 Plan/IEP); and the type(s) of disability (e.g., intellectual disability).

33. The District's EL Department will review the following data on a quarterly basis for each EL student to ensure that each receives the EL services required by this Agreement: English Language Proficiency levels overall and in the four language domains; the amount of EL services (e.g., 60-mins. standard ESL per day, 60-mins. integrated ESL in English/Language Arts per day); if the EL student has a disability for which he or she is receiving disability-related services (or has been referred for a special education evaluation, if applicable); and if the EL student opted out of or exited the EL programs.

34. The District will use valid and reliable criteria for exiting EL students from EL programs and EL status, including a grade-appropriate valid and reliable assessment of the student's English Language Proficiency level in each of the four language domains. Twice a year, the District will monitor the academic performance of each former EL student by reviewing their standardized test scores, composite and domain scores on the English Language Proficiency test at the time of exit, and progress reports for grades, attendance, preparation, and behavior to determine if the student (a) needs any academic support services (e.g., tutoring) or (b) needs to be retested for possible reentry into the EL program. If a former EL student fails to make academic progress and the student's core content teacher(s), in consultation with an ESL-Certified Teacher, determine that this failure may be because of a lack of English proficiency in one or more language domains, the District will notify the student's parents, offer EL services, and provide the student with services to which the parent consents. Each District school will document its monitoring of former EL students, including any identified language barriers and offers of EL services, and send its monitoring reports to the District's EL Department.

35. The District will monitor all schools for compliance with this Agreement. The EL Department will develop and implement school-level audit procedures to evaluate the quality and effectiveness of the EL program at each school and District-wide, based on students' EL services, students' English Language Proficiency levels and academic performance, teacher evaluations, and staffing and resources allocations. The District will provide its audit procedures to the United States for review and approval within 90 days of the Agreement's effective date.

The United States will provide its feedback to the District within 60 days. The District will implement the audit procedures within 30 days of the United States' approval of the procedures. At each school, an administrator will monitor the data required by Paragraph 33 to ensure that each student receives the appropriate amount and type of services and progresses academically.

36. The District will evaluate the effectiveness of each of its EL programs or services to determine whether they are overcoming students' language barriers within a reasonable period of time and enabling EL students to participate meaningfully and equally in all of the District's educational programs. To that end, the District agrees to conduct a longitudinal cohort analysis of EL programs at the elementary, middle, and high school levels by disaggregating and monitoring the following data by current, former, and never EL students for each EL program used by the District: standardized test scores, exit rates, dropout rates, graduation rates, retention-in-grade rates, English Language Proficiency assessments, whether the student is a long-term EL (i.e., identified as an EL for more than five years), and enrollment in special education and enrichment programs (e.g., gifted, honors, and Advanced Placement classes). In conducting the analysis, the District will track a cohort of EL students who were enrolled in kindergarten, third grade, sixth grade, and ninth grade in the 2020–21 school year and who remain enrolled in the District over the term of this Agreement. The District will use the results of its longitudinal analysis to inform EL program decisions and ensure the effectiveness of every EL program.

### **REPORTING**

37. In addition to any reporting requirements provided above, the District will provide to the United States annual compliance reports in electronic format. The District will provide an initial report of the information in Paragraphs 37.A-B each year by October 1.<sup>10</sup> The District will provide a full report of the information in Paragraph 37.A-F each year by July 1. If any required information is available in a document that the District already has prepared to comply with federal or state laws or regulations, the District may include the document in its reports and indicate the section of the report to which the document applies.<sup>11</sup>

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<sup>10</sup> The District will provide its initial report for the 2020–21 school year by June 1, 2021.

<sup>11</sup> The District will provide all reports, plans, and other items required by this Agreement electronically to counsel for the United States via email, if feasible, and will encrypt or password-protect all files containing personally identifiable information. For voluminous data or files, the District will provide such information electronically via other means as agreed to by the United States (e.g., using the USAfx or Justice Enterprise File Sharing platforms).



*A. Identification and Placement of EL Students*

The number of students by grade level and primary or home language indicated on the home language survey (a) whose home language survey indicated a language other than English is spoken at home or by the student; (b) whose parents requested translation; (c) whose parents requested interpretation; (d) whose English Language Proficiency was tested; (e) who were identified as EL students based on the English Language Proficiency test; and (f) whose parents opted out of EL services.

*B. Provision of EL Services and Access to the Core Curriculum*

1. For each individual EL student: student ID number; school; grade level; WIDA Overall English Language Proficiency level; language background; opt out (Y or N); number of years identified as an EL student; long-term EL student (Y or N); newcomer student (Y or N); special education student (Y or N); primary disability; gifted and talented (Y or N); the amount of ESL per day (e.g., 45-minute period); name of the ESL Teacher; if the ESL Teacher has the ESL certification (Y or N); and, if applicable, name of the Co-Teacher for ESL.
2. For each school, the number of EL students in total who have not opted out of ESL and
  - i. Are not receiving any ESL;
  - ii. Are not receiving a daily period of ESL;
  - iii. Are not receiving ESL instruction from an ESL-Certified Teacher;
  - iv. Are not receiving appropriately grouped ESL under Paragraph 8; and
  - v. Are not receiving Sheltered Content Instruction from a teacher who (i) has an ESL certification, or (ii) has completed or is “on track” to complete the training required by Paragraph 17.

*C. Staffing and Professional Development.*

3. A report that includes for each school:
  - a. The total number of EL students and the breakdown of the EL students by WIDA English proficiency level and disability status (e.g., 100 total EL students, 25 L1 (10 with a disability), 25 L2 (5 with a disability), 25 L3 (5 with a disability), and 25 L4 (0 with a disability));
  - b. The total number of teachers of ESL and the breakdown of the number of teachers (i) with an ESL certification and (ii) without an ESL certification;

- c. The total number of special education teachers and the breakdown of the number of special education teachers (i) with an ESL certification and (ii) without an ESL certification; and
  - d. The total number of core content teachers and the breakdown of the number of core content teachers (i) with an ESL certification and (ii) without an ESL certification.
4. A report that includes the teachers by name, subject, school, whether they are co-teaching EL students and whether they (i) have started, (ii) are on track to complete, or (iii) have completed the annual professional development required by Paragraph 15, including the hours of (a) training and (b) in-class support they received.
5. A report that includes the teachers by school, name, and subject/grade-level who were hired:
  - a. Before the Agreement's effective date and are enrolled in a program to obtain an ESL Certification.
  - b. After the Agreement's effective date, indicating for each teacher whether they are:
    - i. On track to obtain an ESL Certification within three years; or
    - ii. On track to obtain the training required by Paragraph 15 within three years.
6. A principal/administrator/instructional coach training report that includes a list of who did not sign in to the training, dates, agendas, and training materials for the annual training required by Paragraph 21.
7. The District's professional development plans for the upcoming school year related to the implementation of this Agreement (e.g., training on Sheltered Content Instruction and principal training), including each training's date, title, target audience, hours, mandatory/voluntary status, and facilitator. Unless a provision in this Agreement provides a different review period, the United States will review these plans and provide the District with any feedback within 60 days.

D. *Access to Special Services.*

8. The number of EL students by school, grade, and native language who (a) were referred to the CHAT team<sup>12</sup> and the date of the referral; (b) were referred for a special education evaluation, (c) were evaluated in the native language, identifying the language; (d) were identified as having a disability, including each disability identified, and (e) received special education services.
9. A list of the special education and ESL teachers by school who received the training required by Paragraph 23.
10. A list of qualified bilingual special education evaluators by name, language(s), and specialty area whom the District uses to evaluate EL students suspected of having disabilities.

E. *Parent Communications*

A list of translated District-level and school-specific documents by title of the document and the languages in which it was translated, and annually thereafter, an updated list of such documents pursuant to Paragraph 28.

F. *Monitoring & Program Evaluation*

11. A list of all former EL students who exited the District's EL programs and are under monitoring at the time of each report. For each student: student ID; school; exit date; number of years in the District's EL programs prior to exit; and English Language Proficiency assessment scores (composite and domain scores).
12. A copy of each District school's monitoring reports developed and provided to the District's EL Department under Paragraphs 34 and 35.
13. The District will complete the longitudinal study described in Paragraph 36 by the end of the 2023–24 school year and provide the results of that study to the United States by August 1, 2024.

38. At least 60 days prior to the desired implementation date, the District will inform the United States in writing, for the United States' review and approval, of all proposed substantive changes or additions to its EL programs, including those based on the results of the longitudinal study, and all changes to EL program policies, procedures, and practices. If the United States does not approve of the proposed changes, it will notify the District in writing within 60 days of receiving the District's proposed changes and the District and the United States together will work to resolve the United States' concerns.

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<sup>12</sup> The Child Assistance Team ("CHAT team") reviews intervention data and makes recommendations for which students should be evaluated for potential disabilities and special education services.



## ENFORCEMENT

39. For the duration of this Agreement, the District will preserve and maintain all records and documents, including all electronically stored information, used to compile required reports and all other documents related to its compliance with the Agreement. The District will provide such information promptly to the United States upon request.

40. The District will provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. With reasonable advance notice, the United States, through its representatives and any consultant or expert it may retain, may conduct site visits (in person or remotely), observe EL student instruction (in person or remotely), interview staff and students, and request any additional reports, information, or data necessary to monitor the District's compliance with this Agreement and with the Equal Educational Opportunities Act. The District will make the requested reports, information, or data available for review within 30 days. The United States also may speak directly, without District counsel and without fear of retaliation against District staff, with District employees who are not administrators and have questions, concerns, or other information to raise with the United States regarding the District's obligations under the EEOA and this Agreement.

41. In the event of a breach by the District of this Agreement, the United States may initiate judicial proceedings in the United States District Court for the District of New Hampshire to enforce the EEOA and the specific commitments and obligations of the District under this Agreement, provided, however, that the parties agree first to negotiate in a good faith effort to resolve the breach for 30 days or until an impasse is reached. 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 will not affect the validity of any other part of the Agreement. The District and United States will meet within 15 days after a court's decision to determine whether the Agreement should be revised or supplemented in response to the court's decision.

42. This Agreement will be binding upon the successor members of the District's Board of Education and successor administrators. The District understands and acknowledges that this Agreement does not relieve the District from its other obligations under the EEOA or other federal laws. 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.

43. This Agreement will remain in effect until the United States determines that the District has complied fully with its provisions and its obligations under the EEOA. The parties anticipate that the District will achieve compliance after it submits its annual report on October 1, 2024. The United States will notify the District of any compliance-based objections within 90 days of receiving the October 2024 report.

44. The parties may, upon mutual written agreement, amend this Agreement to address changed circumstances and/or to improve the delivery of services to EL students.

45. The following signatures indicate the consent of the parties to the terms of this Agreement, which is effective upon its mutual execution. The District representative, by signing this document, gives assurances that the representative has the authority to bind the District, including successor members of the District's School Board and successor administrators, for the Agreement's duration.

**For the United States:**

JOHN J. FARLEY

Acting United States Attorney  
District of New Hampshire



FRANCES COHEN, Civil Chief  
RAPHAEL KATZ, Assistant United States  
Attorney

53 Pleasant Street, 4th Floor  
Concord, New Hampshire 03301  
(603) 225-1552  
raphael.katz@usdoj.gov

PAMELA S. KARLAN

Principal Deputy Assistant Attorney General

SHAHEENA A. SIMONS

Acting Deputy Assistant Attorney General



WHITNEY PELLEGRINO, Acting Chief  
EMILY MCCARTHY, Deputy Chief

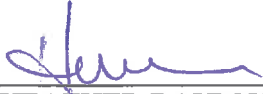
AMELIA K. HUCKINS, Trial Attorney  
Educational Opportunities Section  
Civil Rights Division

United States Department of Justice  
150 M Street NE, Room 10.912  
Washington, DC 20002  
(202) 514-4092  
amelia.huckins2@usdoj.gov

Date: May 24, 2021

*Attorneys for the United States*

**For the Nashua School District:**



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HEATHER RAYMOND, President  
Board of Education  
Nashua School District  
141 Ledge Street  
Nashua, New Hampshire 03060  
raymondh@nashua.edu

Date: May 24, 2021