

Settlement Agreement

Between

The United States

And

The Clay County School District

SETTLEMENT AGREEMENT

PURPOSE

1. The Clay County School District, by signature of its Superintendent, agrees to the terms of this Settlement Agreement in order to address and resolve the compliance issues raised by the United States Department of Justice, Civil Rights Division (hereafter the “United States”) under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 *et seq.* (“EEOA”) regarding the adequacy of the District’s provision of English Language Learner (“ELL”) services, ELL-related personnel, monitoring and evaluation of its ELL program, and communications with Limited English Proficient (“LEP”) parents.
2. 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. The signatories undertake this Agreement as a means of alternative dispute resolution to avoid litigation and for the purposes of judicial and governmental economy.
3. 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 July 2017 report. Prior to the Agreement’s dissolution, the United States shall have 60 days from the receipt of the July 2017 report to raise concerns or objections regarding the District’s compliance with this Agreement, and the enforcement mechanisms in paragraph 54 and

55 shall apply. The date that counsel for the United States signs the Agreement shall be considered the entry date.

DEFINITIONS

4. “Clay County School District” and “the District” refer to the Clay County, Alabama Board of Education and the public schools it operates.
5. “Core Content” refers to English language arts, math, science, and social studies.
6. “ELL” refers to a student who has been determined to be an English Language Learner or 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.
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. “English Language Service Level” or “ELS Level” refers to a student’s level of proficiency in English based on a valid and reliable English language proficiency (“ELP”) assessment of the four language domains of speaking, listening, reading, and writing.
9. “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.
10. “Exited ELL” refers to a student who was formerly an ELL but subsequently met the criteria for exiting ELL status based on a proficient score on a valid and reliable ELP

assessment of the student's English proficiency in each of the four domains of speaking, listening, reading, and writing.

11. "IEP" refers to an Individualized Education Program under the Individuals with Disabilities Education Act ("IDEA"), and "Section 504 plan" refers to a plan designed to meet the individual educational needs of a student with a disability under Section 504 of the Rehabilitation Act of 1973 ("Section 504"). "IEP Team" and "Section 504 Team" refer to the teams constituted under these laws to: identify the student's individual needs; propose placements, programming or services; and/or develop an IEP or Section 504 plan for the student.
12. "Opt-Out ELLs" are students who have not met the criteria for exiting their ELL status and 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.
13. "SWD" refers to a student with a disability under Section 504 or a student who is eligible for special education under the IDEA. "EL SWD" refers to a SWD student who is also an ELL.
14. "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.

GENERAL REQUIREMENTS

15. As required by the EEOA, the District shall take appropriate action to overcome language barriers that impede equal participation by ELLs in its instructional programs. *See* 20 U.S.C. § 1703(f).
16. In an effort to overcome ELLs' language barriers, the District has adopted an ELL Program consisting of ESL instruction by ELS level taught by two or more itinerant ESL teachers with the requisite qualifications set out in paragraph 34; supported content instruction by core content teachers who have received the District's content-based ESL and sheltering methodologies training pursuant to paragraph 33; and consultations between the ESL teachers and the ELLs' core content teachers.
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 and supported content instruction 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, placement, instruction, exiting, and monitoring of ELLs and former ELLs in the District.
19. This Agreement is tailored to the specific characteristics and needs of the District, particularly: its very small population of ELLs spread across schools; the limited availability of ESL certified or endorsed teachers in the area; and its need for a combination of itinerant ESL teachers and core content teachers who receive training in content-based ESL and sheltering methodologies to implement its ELL program given the preceding characteristics.

SPECIFIC REQUIREMENTS

Identification of ELLs

20. 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 a home language survey (“HLS”) immediately upon registration.
21. If a parent/guardian is LEP, the District shall 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. If the parent/guardian’s primary language is Spanish, the HLS shall be provided in Spanish.
22. For any student whose parent/guardian responds “yes” to any of the three questions on the HLS, the District shall ensure that such student is administered a valid and reliable ELP test that assesses English proficiency in all four language domains of listening, speaking, reading, and writing to determine eligibility for ELL services. The District shall ensure that this test is administered as soon as practicable, and no later than 10

school days after any such HLS response that occurs during the first month of the school year, and no later than 5 school days if any such response occurs at any time thereafter.

23. The District currently uses the WIDA ACCESS English proficiency test. If the District desires to use a different valid and reliable English proficiency test and corresponding scoring methodologies, the District shall first seek the consent of the United States.
24. The District shall ensure that students who are tested pursuant to paragraphs 22 and 23 and who receive a composite ACCESS score of 4.7 or below are classified as ELLs.

Instruction of ELLs

25. Due to the small population of ELLs and the unique characteristics of the District identified in paragraph 19, ELL services shall include direct ESL instruction with an ESL teacher, supported content instruction by core content teachers who complete the content-based ESL and sheltering methodologies training required by paragraph 33, and consultations between the ESL teachers and the ELL's core content teachers. The District shall provide ELL services to each ELL that are adequate and appropriate given the ELL's ELS Level, language needs, and other academic needs.
26. The District shall ensure that all ELLs in the District who have not opted out of the ELL program in writing shall receive at least one class period (*i.e.*, approximately 45 minutes) of ESL per day. In addition, the District shall make every effort to assign ELLs to classrooms with core content teachers who have completed the District's content-based ESL and sheltering methodologies training required by paragraph 33. To the extent practicable or appropriate to student need, the District shall provide ELLs with additional language acquisition services, with less proficient students receiving more services.

27. The District ELL Committee shall determine and monitor the ELL service levels and accommodations necessary to meet the needs of every ELL student and shall record the information required in an LEP Plan. The ELL 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 and qualifications of the teacher(s) providing instruction and (b) the number of minutes of ELL services the ELL will receive each day and each week, separately reporting ESL instruction from language support in core content classes.
28. The ELL Committee shall review each ELL student's ELP plan at least once every grading period.
29. By June 30, 2014, and by October 15 of each year thereafter, the District shall submit all ELP plans to the United States for review, and if the United States objects to any Plan based on the adequacy or appropriateness of its ELL services, 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 54 and 55 shall apply.
30. In addition to the ELL services described in paragraphs 25-27, each ESL teacher shall also consult with each of their ELL's core content teachers at least monthly regarding the ELL's identified needs and academic performance with the understanding that the lower the student's ELS level, the more frequently consultations should be conducted. During each consultation the core content teacher shall:

- a. provide the ELL'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; and
- b. identify the academic vocabulary that the ESL teacher should cover to facilitate the ELL's access to the core content.

During each consultation the ESL teacher shall:

- c. identify, and where needed model, instructional strategies to the core content teacher to render the content comprehensible to the ELL; and
 - d. provide supplemental instructional materials that would enable the ELL to meaningfully access the core content.
31. The ELL Coordinator shall collect and monitor all LEP Plans and shall ensure that identified ELLs are receiving adequate and appropriate ELL services according to the provisions set forth in this Agreement.

Instructional Staff

32. By June 30, 2014, the District shall consult with the Southeastern Equity Center to develop a plan for providing ESL training to the District's Instructional Staff.
33. Prior to the start of the 2014-15 school year, the District shall begin training in content-based ESL and sheltering methodologies for all core content teachers of ELLs. The District shall provide training in content-based ESL and sheltering methodologies to core content teachers of each ELL in future school years for the duration of this Agreement.
- 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. 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.

34. By July 1 of each year, 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 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.

Monitoring Current and Exited ELLs and Evaluating Language Acquisition Services

35. For every ELL the ESL teacher, or trained core content teacher as appropriate, shall complete the appropriate section of the ELL's *ESL/LEP Student Skills Matrix Record*, attached hereto as Exhibit A, in October, January, and May of each school year, as specified on the form. The ELL Coordinator shall collect and review all skills matrix records 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 ELL services.
36. The District shall use (a) standardized tests; (b) the assessments provided to all students in the District; (c) grades; (d) skills matrix records completed pursuant to paragraph 35;

and (e) the information gathered from consultations between and among teachers as described in paragraph 30 to monitor the progress of ELLs. When these assessments and monitoring reports reveal that an ELL is struggling in one or more subject areas, the ELL 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 ELL Committee shall convene and adjust the direct ELL services 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 ELL Committee shall document such changes in service level on a new LEP Plan.

37. The District shall monitor all Opt-Out ELLs' progress at least three times per school year, in October, January, and May, using the Monitoring Form (*see* paragraph 40), and shall ensure that each such student is administered a valid and reliable ELP assessment in all four language domains at least once each school year to evaluate their level of English proficiency.
38. The District shall not exit ELLs from ELL services until they meet valid and reliable exit criteria. Those who meet such criteria shall be considered exited ELLs or former ELLs.
39. The District shall identify all former ELLs on all class rosters, and provide copies of the former ELL's ACCESS score report at the time of exit, including all subdomain scores, so that all teachers know the former ELL status of their students.
40. For every exited ELL who has exited the ELL program according to the procedures in paragraph 39, the District shall monitor their progress for at least two school years by ensuring that a general education teacher completes the *Monitoring Documentation of*

Former LEP Students, attached hereto as Exhibit B (“Monitoring Form”). If the monitoring form reveals that an exited 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 ELL Committee shall convene and discuss whether to re-enter the exited ELL in the ELL Program within 30 days. The ELL Committee shall document any changes in service level on a new LEP Plan. The ELL Coordinator shall collect and review all monitoring forms and follow up with the ESL teacher regarding the forms indicating any possible noncompliance with this Agreement or raising any questions about the adequacy or appropriateness of ELL services.

41. The District shall disaggregate and monitor the following data by current and exited 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: performance on standardized tests, including tests in the core content areas; 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.
42. The District shall update its ESL handbook to be consistent with the terms of this Agreement and shall distribute it 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 the protocol for monitoring ELLs, Opt-Out ELLs, and former ELLs. The District

shall submit its revised ESL handbook to the United States for review by May 1, 2014.

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.

Communications with LEP Parents

43. The District shall ask all parents/guardians of already enrolled current and exited 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 already enrolled current and exited ELLs speaking low incidence languages, the District shall ask this question at least orally in a language the parents/guardians understand. For all newly enrolling students, the District shall ask this information on the HLS. The District shall enter the languages needed in its student information system so that they are readily accessible to administrators and teachers.
44. Annually, the District shall advise administrators and teachers regarding the essential information that must be translated and the communications that must be interpreted when the parents/guardians indicate that written translation or oral interpretation is required (e.g., IEP meetings, parent-teacher conferences, discipline hearings).
45. The District shall ensure that all written communications distributed at the District level and all documents containing essential information distributed at the school level for which a parent/guardian requests translation are either translated into the

parent/guardian's primary language or that an oral interpretation by a qualified interpreter 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, unless there is a need for translation into Spanish and the information constitutes "essential information" already translated into Spanish. The District shall provide oral interpretation for any conference between a District teacher/administrator and a non-English-speaking parent/guardian.

46. The District shall create a list, to be updated at least annually, 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. For languages of parents that are not represented among District employees, the District shall identify outside interpreters and translators and include their contact information on the list. 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 or interpretation 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.
47. 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.

48. 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. If an LEP parent/guardian requests that an adult family member or adult friend provide interpretation for a communication with the District or one of its schools, the District must provide an interpretation through qualified District or outside resources for all essential information and any information that raises a potential conflict of interest. The District shall not use family or friends of LEP parents or children for written translations of District- or school-generated documents.

ANNUAL REPORTING TO THE UNITED STATES

49. The District shall provide to the United States the following data for each ELL enrolled in the District by October 15 each year for the duration for the agreement:
- a. Copies of ACCESS scores; and
 - b. Copies of annual LEP Plans as set out in paragraph 29.
50. The District shall provide to the United States the following data for each ELL enrolled in the District by July 1 each year for the duration for the agreement:
- a. Copies of ACCESS scores;
 - b. Copies of all grades and/or progress reports;
 - c. Copies of any LEP Plans revised mid-year; and
 - d. Copies of any LEP Plans for new students enrolling mid-year.
51. 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 1. 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 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, duration, 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, the name and position of District personnel who attended the training, and the materials presented or otherwise distributed at the training;
- c. The number of students by school, grade, native language, and disability (if any) who were exited from the District's ELL program and their ACCESS scores;
- d. Copies of all completed Opt-Out forms;
- e. Copies of completed Skills Matrix Record used to document District monitoring of ELLs and Opt-Out ELLs (*see Exhibit A*);
- f. Copies of completed Monitoring Form used to document District monitoring of exited ELLs (*see Exhibit B*);
- g. The number of former ELLs by school, grade, and native language who were re-entered into the District's ELL program;

- h. A copy of the current District's ESL Handbook;
- i. A copy of the District's translator and interpreter lists required by paragraph 46;
and
- j. Any other information that the District believes will be helpful.

ENFORCEMENT

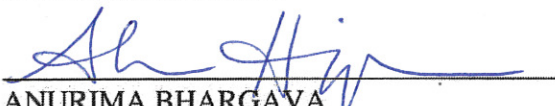
52. The District shall maintain records of all information pertinent to compliance with the terms of this Agreement and shall provide such information to the United States upon request. The United States and the District agree that, as of the date of this Agreement, litigation is not "reasonably foreseeable" concerning the matters described herein. To the extent that the District or the United States previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described herein, the parties are no longer required to maintain a litigation hold. Nothing in this paragraph relieves any party of any other obligations imposed by this Agreement.
53. 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 or any

other EEOA obligations upon giving reasonable notice and consultation with the District to minimize any disruption to the education process in the schools.

54. 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.
55. The District acknowledges and understands that, in the event of a breach by the District of the Settlement Agreement, the United States may initiate judicial proceedings to enforce the EEOA and the specific terms, commitments and obligations of the District under such Agreement.
56. 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 confer within 30 days of any such decision to determine whether the Agreement should be revised or supplemented in response to the court's decision.
57. The following signatures indicate the consent of the parties to the terms of this Settlement Agreement.


For the United States of America:

ACTING ASSISTANT ATTORNEY GENERAL
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