

Settlement Agreement
Between
the United States
and
Lewiston Public Schools

Purpose

Lewiston Public Schools (“the District”) agrees to the terms of this Settlement Agreement (“Agreement”) and to comply fully with its provisions to address and resolve the particular noncompliance issues raised by the United States Department of Justice (“United States”) regarding the District’s legal obligations under the Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1701 *et seq.* (“EEOA”), which requires, *inter alia*, that school districts take “appropriate action to overcome language barriers that impede equal participation by [their] students in . . . instructional programs,” 20 U.S.C. § 1703(f), and Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 *et seq.* (“Title II” or the “ADA”), which prohibits discrimination on the basis of disability by public entities.

After thoroughly reviewing aspects of the District’s program for English Learner students (“ELs”) that were alleged to be inadequate, the United States identified conditions in the Districts’ EL programs and practices that the District needs to address to comply with Section 1703(f) of the EEOA. Specifically, the United States identified that the District failed to (1) ensure that some of its ELs receive educationally sound and appropriate language services; (2) provide appropriate EL services to ELs with disabilities; (3) provide English as a Second Language (“ESL”) instruction with qualified staff; (4) adequately train its faculty on providing appropriate language services to its ELs; (5) adequately train its principals to evaluate all faculty who provide instruction to ELs; (6) use sufficient materials and curricula to implement its EL programs; (7) ensure meaningful communication with Limited English Proficient (“LEP”) parents/guardians; and (8) properly evaluate its EL program for effectiveness.

The United States also identified compliance issues under Title II after conducting an extensive review of the District’s practices regarding its use of abbreviated school days for students with disabilities.

The parties undertake this Agreement as a means of alternative dispute resolution to avoid litigation and for the purposes of judicial and governmental economy. The District agrees to implement the remedial measures enumerated in this Agreement but admits to no violations of the EEOA or ADA by entering into this Agreement. To the extent the District has already started undertaking measures to rectify some of the issues raised by the United States, this Agreement memorializes those remedial measures. The effective date of this Agreement will be the date when both parties have signed the Agreement. The Agreement will remain in effect for three full school years following that date subject to the terms of Paragraphs 63-68 below.

The District representative, by signing this document, gives assurances that the representative has the authority to bind the District, including successor administrators and members of the District’s School Board, for the Agreement’s duration.

I. DEFINITIONS

- **Abbreviated School Day** refers to any day that a student receives educational services for less time than age/grade-level peers within the same school and/or school program at the direction of the District or its employees for disciplinary or classroom management reasons.

- **Behavioral Intervention Plan or BIP** refers to a plan created by appropriately trained professionals for an individual student consisting of positive behavior interventions, strategies, and supports, which may include modifications to the nature of instruction, curriculum, and/or school routine. Such plans are typically developed based on the outcome of a Functional Behavior Assessment and reflect feedback from parents/guardians regarding the emotional, mental, and physical health of the student.
- **English Learners or ELs** 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 provides a systematic and developmentally appropriate approach to teaching language. ESL instruction addresses the listening, speaking, reading, and writing standards in the World-Class Design and Assessment (“WIDA”) English Language Development Standards adopted by the Maine Department of Education.
- **ESL-Endorsed Teacher** refers to a teacher who holds an ESL teaching endorsement from the Maine Department of Education. ESL is taught by an ESL-Endorsed Teacher under this Agreement.
- **Former EL** refers to a student who was formerly an EL but subsequently met valid and reliable criteria for exiting the EL program, including demonstrating proficiency on a valid and reliable assessment of English Language Proficiency in all four language domains (reading, writing, speaking, and listening).
- **Functional Behavior Assessment or FBA** refers to a systematic set of strategies that the District will use to determine the underlying function or purpose of a student’s behavior, so that the District can develop an effective BIP for the student. The District’s FBA describes the problem behavior, identifying preceding or subsequent events that control the behavior, and then develops and tests a theory of the behavior. Qualified professionals (e.g., psychologists, behavior analysts, special education instructors, school counselors) will complete the District’s FBAs after collecting and analyzing relevant data, including, *inter alia*, student records, teacher and staff feedback, interviews with the student and the student’s parents/guardians, and direct observation of the student. An FBA under this Agreement does not require the involvement of a Board Certified Behavioral Analyst.
- **Integrated ESL/ELA** refers to a core literacy class that is (a) taught by an ESL-Endorsed Teacher who is also certified in English Language Arts, and the ESL-Endorsed Teacher provides the ELs explicit ESL; or (b) co-taught by an ESL-Endorsed Teacher and a teacher certified in English Language Arts who have co-planning time together, and the ESL-Endorsed Teacher provides the ELs explicit ESL. Integrated ESL/ELA may include Specially Designed Instruction English Language Arts for students with disabilities.

- **Individual Language Acquisition Plan or ILAP** is a document that the Maine Department of Education requires the District to create for each EL that describes the EL’s specific language-learning goals and the instructional modifications, interventions, and accommodations that the District will provide to the EL. The District maintains a copy of the ILAP in the student’s file and updates it at least annually.
- **Major Languages** refers to the District’s most commonly spoken languages among ELs other than English, and includes Somali, Portuguese and French, and any languages spoken by 100 or more parents/guardians in the District based on the preferences stated in parental/guardian responses to questions on the language preference survey each school year.
- **Opt-Out EL** refers to an EL student whose parents/guardians opted out of instructional services for ELs by signing a voluntary and informed waiver of such services in a language they understand.
- **Sheltered Content Instruction** refers to a method for teaching ELs grade-level core content (i.e., English/Language Arts, math, science, and social studies) 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 ELs while promoting their English language development, such as: teaching to language objectives that help ELs achieve the content objectives; building and activating background knowledge; explicitly teaching academic vocabulary; scaffolding instruction; differentiating instruction for ELs; grouping ELs by English Language Proficiency level; using supplementary and adapted materials, texts, and visual displays; 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 ELs’ language use and demonstration of content knowledge.
- **Students with Limited or Interrupted Formal Education or SLIFE** refers to a sub-group of ELs who are assessed as two or more grade levels below their grade-level and/or age peers in native language literacy and/or math skills, and where the gaps are either the result of interruptions in their education in their home countries or the effect of having education limited by such factors as irregular or short school days.

II. EEOA COMPLIANCE

GENERAL REQUIREMENTS

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

SPECIFIC REQUIREMENTS

Identification and Placement of EL Students

2. The District will continue to require all parents/guardians to complete a home language survey during the new student registration process.

3. The District will continue to maintain the position of EL Intake Coordinator, whose responsibilities include walking parents/guardians through the enrollment process and assisting in administering assessments to determine English Language Proficiency and whether the student is a SLIFE.

4. To ensure that ELs are properly identified, the District will continue to administer a valid and reliable grade-appropriate English Language Proficiency assessment in all four language domains to all students in grades K-12 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, except that the District may assess incoming kindergarteners' English Language Proficiency only in listening and speaking in the fall semester.

5. Within 60 days of the effective date of this Agreement, the District will submit its plan for timely identifying SLIFE to the United States for review and approval. The United States will provide its feedback on the District's plan within 60 days. By the start of the 2021-2022 school year, the District will implement the plan approved by the United States. The plan will include the District's approach to (a) collecting accurate information with sufficient detail about the extent of a student's limited schooling, by, among other things, revising the District's family history interview form; and (b) assessing SLIFEs' literacy skills and math skills through native language assessments.

6. The District will administer the English Language Proficiency assessment, collect information to determine SLIFE status and SLIFE home language literacy and math levels, and place all K-12 students identified as ELs in an appropriate EL program, including providing SLIFE programming designed to address the needs of SLIFE, within the first 30 days of the school year, and if the student enrolls thereafter, within 14 days from the date of the student's enrollment.

7. By the start of the 2021-2022 school year, and annually thereafter, the District will train all registration and intake personnel, including all staff involved in the registration and enrollment process, on its EL identification and placement policies and procedures, including those outlined in Paragraphs 2-6 above.

Provision of EL Services and Access to the Core Curriculum

8. By the start of the 2021-2022 school year, the District will provide all ELs, regardless of whether they are on an abbreviated school day or full day, at least a daily period¹ of ESL taught by an ESL-Endorsed Teacher unless the EL student's parents/guardians make a voluntary and informed decision in writing to opt out² of such services. The District will provide at least one additional period to all newcomers, SLIFE, and ELs with English Language Proficiency levels 1 and 2, consistent with Paragraph 10.

9. The District will review the English language proficiency of all ELs in its "Supported Grade Level Instruction" program who are receiving only a supplemental literacy support course and/or case management monitoring. For each of these students who does not meet valid and reliable exit criteria, including demonstrating proficiency on a valid and reliable assessment of English Language Proficiency in all four language domains, the District will provide at least a daily period of direct ESL to the student, consistent with Paragraphs 8 and 10.

10. The District agrees that ESL is a core subject for ELs and will provide ESL in addition to other core subjects as follows:

a. Levels 1 and 2 ELs who are newcomers or SLIFE will receive: (i) a daily designated period of ESL with only other Levels 1 and 2 ELs who are newcomers or SLIFE in the class; and (ii) an additional daily ESL period that may be provided in an EL-only Integrated ESL/ELA class. For those ELs on a two-day block schedule at Lewiston High School, the District will provide the first ESL period on first day of the block schedule and the additional ESL period on the second day;

b. Levels 1 and 2 ELs who are not newcomers or SLIFE will receive: (i) a daily designated ESL period with only other Levels 1 and 2 ELs who are not newcomers or SLIFE in the class; and (ii) an additional daily ESL period that may be provided as another EL-only designated ESL period or in an Integrated ESL/ELA class with no more than 10 ELs in the class. For those ELs on a two-day block schedule at Lewiston High School, the District will provide the first ESL period on the first day of the block schedule and the additional ESL period on the second day so that these ELs receive a daily period of ESL;

c. Level 3 ELs will receive a daily designated ESL period; and

d. Level 4 ELs will receive a daily period of ESL that may be provided in a designated ESL period or an Integrated ESL/ELA class.

11. The District will group ELs for daily designated ESL periods by (a) their English Language Proficiency level within a single grade or vertically across grades (limited to two

¹ A "period" is at least the equivalent time allocated for core content subjects. For those Level 3 and Level 4 EL students on a two-day block schedule at Lewiston High School, "daily period" or "daily designated ESL period" means that the ESL period may be scheduled on one of the two days of the block schedule, consistent with Paragraph 10.

² Opt-out ELs remain entitled to all appropriate EL accommodations on classroom and standardized assessments and may not opt out of the annual English Language Proficiency assessment.

consecutive grades at the elementary level) or (b) two comparable, consecutive English Language Proficiency levels within a single grade, and for Level 1 and 2 newcomer and SLIFE students in accordance with Paragraphs 10.a and 10.b above. Within 30 days of the effective date of this Agreement, the District will submit to the United States its plan for (a) providing ESL to EL students in Integrated ESL/ELA classes during the 2021-2022 school year and (b) evaluating the effectiveness of its Integrated ESL/ELA classes (“Integrated ESL/ELA Plan”) each year that the Agreement is effective. The United States will provide feedback on the District’s plan within 30 days. By the start of the 2021-2022 school year, the District will implement the plan approved by the United States. By June 1 of 2022 and 2023, the District will provide the United States its Integrated ESL/ELA Plan for the upcoming school year, including the results of its evaluation of the effectiveness of Integrated ESL/ELA. The United States will provide feedback within 45 days of receiving the plan and the District will implement the plan approved by the United States by the start of the school year. The United States will have opportunities to review the progress of all EL students in Integrated ESL/ELA classes, consistent with Paragraph 64 of the Agreement.

12. To ensure meaningful access to grade-level core content instruction, all ELs will receive Sheltered Content Instruction in language arts, math, science, and social studies where instruction is primarily in English and teachers use effective sheltering strategies (including but not limited to those in the definition of Sheltered Content Instruction above) to make lessons comprehensible to ELs while promoting their English language development. To support ELs with the least amount of English, the District will prioritize the assignment of ELs with English Language Proficiency levels 1-2 to Sheltered Content Instruction classes taught by ESL-Endorsed Teachers who are either content-certified or co-teaching with content-certified teachers.

13. The District agrees that SLIFE have language acquisition needs that are distinct from other Level 1 ELs and newcomers. The District will modify its ESL programming for SLIFE to target the specific needs of SLIFE based on a sound educational theory. ESL programming for SLIFE will include instructing SLIFE on the (a) fundamentals of attending and participating in school that will be required of them; and (b) language and subject area content that they will need to participate in school. The District will ensure that SLIFE are not unnecessarily segregated from their peers, and have equal opportunities to participate in all electives and extra-curricular activities.

14. When the District determines that there is sufficient evidence of an EL’s ability to perform successfully within non-SLIFE EL programming, SLIFE may be re-designated from SLIFE to former SLIFE (maintaining their EL designation). To make such determinations, the District will use a range of evidence, including student grades and academic progress, assessments, written observations and recommendations of teachers, attendance, social and emotional measures, and academic habits.

15. Within 60 days of the effective date of this Agreement, the District will submit a plan with its proposed SLIFE programming and exit criteria to the United States for review and approval. The United States will provide feedback within 60 days of receiving the plan, and the District will implement an approved plan by the start of the 2021-2022 school year.

16. So that teachers know which students need language assistance, all current and former ELs will have their English Language Proficiency level and status (e.g., active, waiver, or in monitoring), EL services and EL-related accommodations, and SLIFE status (e.g., active, former) noted on all electronic databases and class rosters and recorded in their ILAP. The District agrees to review class rosters and ILAPs at least once each semester to ensure that all ELs receive the EL services required by this Agreement. If the District learns that an EL is not receiving EL services consistent with this Agreement, the District will take the requisite steps to ensure that the EL receives appropriate services within ten days, consistent with this Agreement.

17. All provisions of this Agreement apply equally to ELs with disabilities. No EL with a disability will be denied ESL due to the student's disability; nor will that student be denied special education services due to his/her EL status.³ The District will notify parents/guardians of ELs with disabilities in writing in a language they understand and, if needed, through qualified interpreters as set forth below in Paragraphs 32-35, that their child is entitled to both ESL and special education services.

Staffing and Professional Development

18. The District will actively recruit ESL-Endorsed Teachers for relevant teaching positions. Within 120 days of the effective date of this Agreement, the District will provide a plan for the recruitment of such staff to the United States for review and approval. The District's notices regarding teaching vacancies will express a preference for candidates with the Maine Department of Education ESL endorsement. 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 endorsed in ESL. The District will continue to encourage its teachers to pursue obtaining the Maine Department of Education ESL endorsement.

19. The District will ensure that the ESL components of its EL programs, including its elementary school pull-out program and secondary school ESL classes, are taught by ESL-Endorsed Teachers.

³ The District will provide ESL to EL students with disabilities in accordance with this Agreement unless a parent/guardian opts out of EL services in accordance with Paragraph 8, 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 under any circumstances be capable of using or understanding language. The student's parent(s)/guardian(s) must be informed of the effects of the waiver in writing and in person in a language they understand, using qualified interpreters and translators.

The method of delivering ESL instruction to an EL student with a severe disability under this Agreement may be modified if the student's IEP team determines and documents in the IEP that the modification is necessary given the student's disability (e.g., the daily ESL period is provided in three 20-minute increments throughout the day rather than all at once for 60 minutes given the severity of the EL student's disability). Such a modification may not result in an EL student with a disability receiving less than the one to two daily periods of ESL required by Paragraph 8, and while the modification is in effect the student's Special Education Case Manager and ESL Case Manager shall meet at least monthly to discuss the student's progress in English and recommend EL-related accommodations as appropriate, and determine if the method of delivery needs to be changed to ensure that the student makes progress in English.

20. The District will ensure that teachers of Sheltered Content Instruction are certified in the content area and (a) have an ESL endorsement, (b) have been trained to use effective techniques to shelter content and promote ELs' English language development, as set forth in the definition of Sheltered Content Instruction above and Paragraph 22.a below, or (c) are "on track" to complete the training required by Paragraph 22.a within three years as set forth in Paragraph 24.

21. The District will ensure that all teachers of ELs, including ESL-Endorsed Teachers who provide direct ESL instruction, core content general education teachers, and special education teachers, receive training regarding the specific language development needs of SLIFE, as set forth in Paragraph 22.b below.

22. Within 60 days of the effective date of this Agreement, the District will develop and send the United States for review and approval a professional development plan that will provide:

a. Core content teachers of ELs who lack an ESL endorsement adequate training on effective strategies for sheltering content for ELs and promoting their English language development in all four language domains. The professional development plan will provide each teacher, annually, with at least ten hours of in-person training on effective sheltering and English language development strategies⁴ and at least five hours of in-classroom support on using those strategies (i.e., coaching from the trainer or an EL specialist with expertise in sheltering content, including co-planning sheltered content lessons for ELs, observing them in class (with modeling as appropriate), and sharing constructive feedback on the observed lesson).

b. All teachers of ELs, including ESL-Endorsed Teachers who provide direct ESL instruction and core content teachers, adequate training regarding the specific language development needs of SLIFE, which may be included in the ten hours of annual in-person training described in subparagraph a. The professional development plan will provide the below training on an annual basis for new teachers who have not previously completed the training, provided that SLIFE training for new teachers may be divided up over their first two years of employment. The plan will also ensure that the District's regularly held "Professional Learning Communities" include programs related to the specific language development needs of SLIFE. The professional development plan will provide:

- i. For ESL-Endorsed Teachers who provide direct ESL instruction, six hours of training on SLIFE to be completed by the start of the 2021-2022 school year;
- ii. For core content teachers of ELs and special education teachers of ELs, three hours of training on SLIFE to be completed by the start of the 2022-2023 school year; and
- iii. If the United States notifies the District by January 31, 2023 that additional SLIFE training is needed, then by the start of the 2023-2024

⁴ See Paragraph 12 and Definition of Sheltered Content Instruction above.

school year, core content secondary school teachers will receive at least two hours of training specifically tailored to teaching SLIFE in their subject areas; elementary school teachers will receive at least two hours of training specific to meeting the language development needs of SLIFE elementary school students; and special education teachers will receive at least two hours of training on the specific language development needs of SLIFE.

23. The District will ensure that the professional development described in Paragraph 22 gives teachers practical instructional strategies appropriate for planning, delivering, and adapting content for ELs within the context of standards-based lesson planning, instruction, and assessment and sufficient opportunities for modeling, practicing, and receiving feedback regarding such strategies.

24. Being “on track” to complete the professional development described under Paragraph 22.a within three years will mean that core content teachers of ELs who lack an ESL endorsement 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.

25. 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-Endorsed to become ESL-Endorsed or to complete the training required by Paragraph 22 within three years of their hire.

26. The District will develop a classroom observation teacher feedback tool for use in all schools by a) administrators to evaluate and b) instructional coaches to support teachers’ implementation of ESL, Sheltered Content Instruction in core content classes, and SLIFE-specific teaching strategies. Within 120 days of the Agreement’s effective date, the District will provide its proposed classroom walkthrough teacher feedback tool to the United States for review and approval, and the United States will provide its feedback to the District within 90 days thereafter. Within 90 days of the United States’ approval of the tool, the District will train its administrators and instructional coaches on using the tool. Administrators and instructional coaches will use the tool for each evaluation and observation. The District will review completed tools to assess if the sheltering, ELD, and SLIFE strategies taught in the training required by Paragraphs 22.a and 22.b are transferring to classrooms of ELs. The District will retain completed tools and provide them to the United States upon request.

27. The District will provide principals and any other administrators who evaluate teachers of ELs with annual training regarding their responsibilities under this Agreement, in addition to training on how to identify and support effective ESL, sheltering teaching strategies in classroom instruction, SLIFE-specific teaching strategies, and how to use the classroom observation tool described in Paragraph 26 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 120 days of the Agreement’s effective date and annually thereafter by October 1 if the District proposes changes to the training; the United States will provide its feedback to the District within 90 days.

EL Materials and Curriculum

28. The District will provide adequate instructional materials for all ELs, including SLIFE. Materials will include age- and grade-appropriate ESL and core content materials that include a SLIFE component or supplement. The District will consider the needs of ELs, including SLIFE, during the District's core content textbook and curriculum review and adoption process. The District will ensure all ESL teachers receive training on new instructional materials prior to their use in schools.

29. The District will develop or adopt over the course of this Agreement (a) grades K-8 ESL curricula with appropriate scope and sequence for non-SLIFE ELs; and (b) grades K-12 ESL curricula with appropriate scope and sequence for SLIFE. Within 60 days of the effective date of this Agreement, the District will submit its proposed curricula to the United States for review and approval; the United States will provide its feedback to the District within 45 days. The District will implement the curricula by the start of the 2021-2022 school year.

30. The District will require ESL teachers to complete training on the new curricula within 60 days of the approval of the curricula by the United States.

Communications

31. To identify LEP parents/guardians who need language assistance, the District will continue to ask parents/guardians to indicate on the home language survey whether they need school- and district-level communications in a language other than English through interpreters and translations. The District will make this information 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/guardians and sending out notices to parents/guardians. During this training, the District will explain how to obtain qualified interpreters and translations of essential information into the District's Major Languages. The District also will add a statement (translated into the Major Languages) to its registration packet, its online registration form, and the homepage of the District and school websites about the availability of interpretation in multiple languages and how to request an interpreter or a translation.

32. The District agrees to give LEP parents/guardians access to school-related information provided to other parents/guardians as follows:

a. Notices or documents containing essential information⁵ that are distributed at the District or school level will be accurately translated into the District's Major Languages

⁵ "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/guardian's preferred language of communication, and the process for refusing all or only specific EL services; (e) requests for parent/guardian 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

and distributed to parents/guardians speaking those languages; and speakers of languages other than the Major Languages will be provided, in a timely manner, written translations or interpretation of the documents in a language they understand either upon request or if the need for such translation becomes apparent to the District.⁶

b. Oral communications of essential information will be provided in a language the parent/guardian understands by means of an interpreter without undue delay. The District will provide oral interpretation or written translation of other school-related information upon receiving reasonable, specific requests for such information from LEP parents/guardians.

33. All District or school-provided interpreters and translators, whether paid District employees, contractors, or volunteers, will be: bilingual in English and the language of interpretation or translation; demonstrably qualified and competent to interpret or translate; trained in providing the interpretation they are asked to provide (e.g., simultaneous interpretation for hearings or large-group parent/guardian meetings); and sufficiently knowledgeable in both languages of any specialized terminology needed to provide the requested interpretation or translation accurately (e.g., special education terms for IEP meetings); and trained in the ethics of interpretation and translation (e.g., the need for accuracy and confidentiality). Except in an emergency, the District will not use family or friends of LEP parents/guardians (who do not otherwise meet all of the qualifications, competence, and training criteria described in this paragraph), 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 interpreter or translator is available, the District will follow up with the parent/guardian in a timely manner to communicate, through a qualified interpreter or accurate translation, the information that the family or friends orally interpreted. If instructional staff are asked to provide translation or interpreter services, the District will ensure that such duties do not interfere with the staff member's instructional and monitoring duties with respect to ELs and former ELs.

34. The District will develop written materials for parents/guardians that provide clear, accurate, and current information about each of its EL programs, including, but not limited to: (a) the amount of weekly ESL provided, depending on the EL's English Language Proficiency level; (b) the amount of weekly Sheltered Content Instruction provided; and (c) whether classes in the EL program count as core credits or electives toward graduation requirements. The District will translate these materials into the Major Languages and will provide them to all parents/guardians prior to an initial EL program placement whenever possible and at least within 15 days of an EL program placement, and offer a qualified interpreter to explain items (a)-(c) above to LEP parents/guardians of other languages.

35. To ensure that all schools have access to already translated information, the District will provide central office and school-based employees with electronic access to an

an application, parent-teacher conferences, open houses); (g) special education documents, including IEPs, BIPs, and FBAs; (h) information about student discipline; (i) parent/guardian handbooks; (j) information related to public health and safety; and (k) any other written information describing rights/responsibilities of parents/guardians or students and benefits/services available to parents/guardians and students.

⁶ The District agrees to extend this translation obligation to essential information on the District's website.

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 LEP parents/guardians, the District will provide principals with a list of the names, languages, and contact information for all District employees, contractors, and others who provide translation and interpretation services. 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. The policies and procedures regarding access to translation and interpretation services will be included in the District's annual training for administrators and teachers.

Program Monitoring and Evaluation

36. The District will monitor the EL services and English Language Proficiency progress of current ELs and the academic performance of current and former ELs through its electronic student information system(s). To facilitate its monitoring of current and former ELs, the District will maintain the following information in each student's permanent educational record: the home language survey; family history form; ILAP; the EL's initial and annual English Language Proficiency assessment scores in all domains; and the EL's specific ESL services (e.g., daily pull-out ESL services, or SLIFE ESL). The District will maintain electronically the initial and annual English Language Proficiency assessment scores in all domains. To permit evaluations of its ESL/Sheltered Content program and SLIFE programming over time, the District will maintain in its student database the following data in separate fields: all English Language Proficiency assessment scores, including the initial screener and annual assessment scores; standardized test scores; retention, drop out, and graduation data; whether the student is a long-term EL (i.e., identified as EL for six years or more), an opt-out EL, a former EL, a newcomer EL, or SLIFE, or former SLIFE; and the year that the student was designated as an EL.

37. The District will review tracking data for each EL (including the English Language Proficiency levels in all four language domains), services (i.e., ESL and Sheltered Content Instruction), the amount of services (e.g., 45-mins. ESL/day, 90 mins. sheltered math/day), SLIFE status, and whether the EL has a disability (or has been referred for a special education evaluation, if applicable) on a quarterly basis to ensure that all students identified as eligible for EL services are receiving appropriate services, unless the ELs have opted out of or exited the District's EL programs.

38. The District will use valid and reliable criteria for exiting ELs 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. The District will monitor the academic performance of former EL students each quarter or trimester 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 needs any academic support services (e.g., tutoring) or needs to be retested for possible reentry into the EL program. If a former EL student fails to make academic

progress and if an ESL-Endorsed Teacher, an administrator, and core-content teachers determine that this failure may be due to a lack of English proficiency, the District will notify the student's parents/guardians and offer EL services and provide the student with the services that the parents/guardians accepts within twenty days. Each District school will send its monitoring reports to the District's EL Department.

39. The District will monitor all schools for compliance with this Agreement. To that end, the District will develop school-level audit procedures to evaluate the quality and effectiveness of the EL programs, based on students' services, students' English Language Proficiency and academic performance, teacher evaluations, and staffing and resources allocations. At each school, an administrator will monitor the tracking data required by Paragraph 38 above to ensure each student receives the appropriate amount and type of services and progresses academically. If the District learns that an EL student is not receiving ESL or sheltered content instruction as required by this Agreement, the District shall provide the requisite services within twenty days.

40. The District will evaluate the effectiveness of each of its EL programs to determine whether they are overcoming 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 three-year longitudinal cohort analysis of its ESL/Sheltered Content program and SLIFE programming at the elementary, middle, and high school levels by disaggregating and monitoring the following data by current, former, and never ELs, and by SLIFE status (current, former, never) for each EL program utilized by the District: standardized test scores, exit rates, dropout rates, graduation rates, retention-in-grade rates, English Language Proficiency assessments, 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 ELs who were enrolled in kindergarten, third grade, sixth grade, and ninth grade in the 2020-2021 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.

III. ADA COMPLIANCE – ABBREVIATED SCHOOL DAYS

Staffing and Accountability

41. Within 60 days from the effective date of this Agreement, the District will retain and consult with a qualified third-party consultant mutually agreed upon by the District and the United States ("Consultant"), to provide ongoing technical assistance related to the District's implementation of and compliance with the terms of this Agreement, including the development and implementation of policies, practices, and procedures for: Abbreviated School Day placements, FBAs, BIPs, and other interventions as alternatives to Abbreviated School Days, and monitoring of such placements. The Consultant will have expertise regarding adolescents who have behavioral challenges related to disabilities. The contract between the Consultant and the District will run for the term of this Agreement.

42. Within 90 days from the effective date of this Agreement, the District will hire or designate an individual to serve as Intervention Coordinator who is qualified to carry out all the responsibilities in Paragraph 41.

43. In collaboration with the Consultant, the Intervention Coordinator will:

a. Manage the development of the policies and procedures for non-discriminatory Abbreviated School Day placements and oversee their implementation;

b. Develop and/or revise policies, protocols, checklists, and/or model behavior assessments and intervention documents (including FBAs and BIPs) to assist staff in appropriately and effectively managing disability-related behaviors that may lead to consideration of an Abbreviated School Day; and

c. Oversee the implementation of all other responsibilities required under Section III of this Agreement (ADA Compliance – Abbreviated School Days).

Non-Discriminatory Abbreviated School Day Placements

44. The District will administer Abbreviated School Day placements in a manner that does not discriminate on the basis of disability.

45. Prior to all Abbreviated School Day placements for students with disabilities with disability-related behavior, the District will document completion of all of the following steps to try to keep those students in the full-day program.

a. Identify through FBAs the underlying causes of the behaviors of concern that led to the Abbreviated School Day consideration;

b. Develop and implement with fidelity individualized BIPs based on students' behaviors and circumstances;

c. Implement one or more evidence-based practices to improve the behaviors of concern that led to the consideration of an Abbreviated School Day;

d. Determine whether the District previously placed students on Abbreviated School Days, and if so, whether the placements succeeded in addressing the behaviors at issue and if not, why the District still believes Abbreviated School Day placements are appropriate; and

e. Consider and test all reasonable alternatives to Abbreviated School Days, including considering day treatment program placements and alternative full-day schedules (such as pull-out sessions in school) to keep the student in the full-day program.

46. The District will not use Abbreviated School Days as transitional placements for students with disabilities while those students are awaiting any other placements.

Educational Opportunities for Students with Disabilities on Abbreviated School Days

47. For all students with disabilities on Abbreviated School Days due to disability-related behaviors, the District will ensure through a system-wide program and method of administration that:

a. Students receive full access to the general education curriculum and reasonable modifications of policies, procedures and/or practices as determined by the students' individual disability-related needs;

b. Students who are ELs will continue to receive appropriate EL services, including at least a daily period of ESL and additional services if the student is a SLIFE (as required above in Section II of this Agreement);

c. Students are able to participate in local and statewide assessments; and

d. Students receive supports and services to address the disability-related behaviors at issue so that they will be able to successfully return to a full-day schedule as soon as possible.

48. The District will regularly monitor academic progress of students with disabilities covered by Paragraph 47, including progress of EL students in overcoming language barriers.

49. The District will create a system-wide program and method of administration to ensure that, for all students with disabilities covered by Paragraph 47, school staff develop: (i) targeted dates when students are expected to return to full days that are no more than 45 days from the first date of the Abbreviated School Day enrollment ("Targeted Return Date"); (ii) anticipated dates when the District will review progress of students to return to full days; (iii) the specific measures for determining when return to full days is appropriate; and (iv) the steps needed to ensure a successful transition to a full day, such as meetings with teachers, students and parents/guardians, additional supports and services, and training of staff on disability-related interventions. The District will make good faith attempts to include parents/guardians in the development of the dates/steps in (i)-(iv) above and will require at a minimum communication of those dates/steps to parents/guardian in a manner that is accessible given their language needs and/or disabilities.

Data Collection and Monitoring of Abbreviated School Days

50. The District will implement system-wide policies and methods of administration that will require the District to monitor students on Abbreviated School Days, including through the collection and maintenance electronically of the following information regarding every student on an Abbreviated School Day: (a) student identification number; (b) school; (c) grade; (d) date of birth; (e) sex; (f) whether the student has an (i) IEP; and/or (ii) 504 Plan; (g) if the student has an IEP or 504 Plan, the disability identified on that plan; (h) EL status (Active, Op-out, Exited [if within last three years]); (i) SLIFE status (Active, Former, Never); (j) the number of hours per week the student is scheduled to attend school; (k) the date the student started enrollment in the District; (l) the date the student started on the Abbreviated School Day; (m) the

date the student's Abbreviated School Day ended (if it ended) or expected return date; (n) whether the student started on a full-day schedule after the Abbreviated School Day placement, and if not, an explanation of what happened after the end of the Abbreviated School Day (e.g., the student dropped out, the student graduated, etc.); (o) a detailed explanation of why the student was/is on an Abbreviated School Day; (p) for students with disabilities, the number of hours of missed instruction and the number of missed services and supports on the student's IEP and/or 504 Plan; (q) for a student with a disability, whether the student has a BIP, and the date of the BIP's implementation; and (r) for a student with a disability on an Abbreviated School Day for disability-related behavior, whether the District (i) took the steps described in Paragraph 45 before placing the student and (ii) is meeting all of the requirements described in Paragraphs 47-49.

51. The District will implement system-wide policies and methods of administration that will require monthly meetings of the special education supervisor and principal at each school to review the Abbreviated School Day data described in Paragraph 50 for their school and other relevant information, including individual student files, to (a) identify and examine causes of any disproportionate placement of students with disabilities on Abbreviated School Days; and (b) ensure the school is complying with the terms of this Agreement's provisions related to Abbreviated School Day placements. If a problem under (a) or (b) is identified, the District policies will require the special education supervisor or principal will notify the Intervention Coordinator and ensure that appropriate remedial steps are taken, such as returning a student to a full-day schedule as soon as practicable, implementing a BIP, and providing additional training to staff.

52. The District's system-wide policies and methods of administration will require monthly review by the Intervention Coordinator of the Abbreviated School Day data described in Paragraph 50 for all schools and other relevant information as appropriate to (a) identify and examine causes of any disproportionate placement of students with disabilities on Abbreviated School Days; (b) ensure compliance with the terms of this Agreement's provisions related to Abbreviated School Day placements; and (c) ensure that the principal has taken all appropriate remedial measures as provided for in Paragraph 50.

53. The District's system-wide policies and methods of administration will require the Intervention Coordinator to monitor discipline data for students with disabilities previously on an Abbreviated School Day for disability-related behaviors to ensure that the District is not using disciplinary practices (e.g., suspensions and expulsions) to discriminate against students with disability on the basis of disability. If the District finds discriminatory treatment against those students on the basis of disability, the District will take all appropriate remedial measures, such as providing training for staff and additional supports and services for the student.

Policies/Procedures and Training

54. Within 60 days of the effective date of this Agreement, the District will develop policies and procedures to ensure compliance with Paragraphs 44-53 above and submit them to the United States for review and approval. The United States will provide its feedback to the District within 60 days. The District will implement the new agreed-upon policies and procedures by the start of the 2021-2022 school year.

55. The District will ensure that all special education personnel, school counselors, and school psychologists receive annual training on:

- a. The District's prohibition of discrimination on the basis of disability;
- b. Behaviors that are, or tend to be, related to a disability;
- c. How to appropriately respond to such behaviors including through the use of behavioral interventions and evidenced-based practices, and how to conduct FBAs and develop BIPS (training to be conducted by the District's Consultant or, with approval by the United States, another individual with expertise on FBAs, BIPs, and evidenced-based practices for students with disabilities);
- d. The requirements of Section III of this Agreement (ADA Compliance – Abbreviated School Days).

56. The Intervention Coordinator, in collaboration with the District's Consultant, will identify which general education teachers and ESL teachers should receive some or all of the training required under Paragraph 55, and the District will ensure that the identified teachers receive that training.

57. The District will ensure that all building principals receive training sufficient to comply with the provisions of this Agreement, including carrying out their data monitoring responsibilities under Paragraph 51.

58. Within 60 days of the effective date of this Agreement, the District will develop and send the United States for review and approval a professional development plan covering the training required under Paragraphs 55-57. The United States will provide feedback on the plan within 60 days and the agreed-upon plan will go into effect starting the 2021-2022 school year.

IV. REPORTING

59. The District will provide to the United States annual reports in electronic format detailing its efforts to comply with this Agreement. An initial report of the information in Paragraphs 60.a-b and 61.a below will be provided by November 1, 2021, and annually thereafter on November 1. A full report providing the information in Paragraph 60.a-f and Paragraph 61.a-d will be provided by August 1, 2022, August 1, 2023, and August 1, 2024, including information for the school year that just ended. If any of the information required for the annual reports in a particular school year 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

60. EL Programs – Annual Report Requirements

- a. *Identification and Placement of EL Students*

The number of students by grade level and language background (i.e., 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/guardians requested translation; (c) whose parents/guardians requested interpretation; (d) whose English Language Proficiency was tested; (e) who were identified as EL based on the English Language Proficiency test; (f) who were identified as SLIFE; and (g) whose parents/guardians opted out of EL services.

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

- i. For each individual EL student: local student ID number; school; grade level; WIDA Overall English Language Proficiency level; language background; EL status (i.e., active, former, never); opt out (Y or N); type of ESL program (e.g., SLIFE ESL, ESL Pullout); amount of ESL instruction per day; name of ESL Teacher(s); whether ESL Teacher(s) has the ESL endorsement (Y or N); whether the ESL Teacher(s) has completed the training required by Paragraph 22.b (Y or N); the subject of each Sheltered Content Instruction class; name of the teacher of each Sheltered Content Instruction class, and whether the sheltered core content teacher is ESL-Endorsed, has completed the training required by Paragraph 22.a or is “on track” to complete it, and has completed the training required by Paragraph 22.b; number of years identified as EL; long-term EL (Y or N); newcomer (Y or N); SLIFE status (active, former, never); special education (Y or N); primary disability; and gifted and talented (Y or N).
- ii. For each school, the number of ELs in total and by English Language Proficiency Level⁷ who:
 1. are not receiving any ESL and have not opted out of ESL;
 2. are not receiving a daily period of ESL;
 3. are not grouped for ESL in accordance with the requirements of Paragraphs 10 and 11;
 4. are not receiving ESL instruction from an ESL-Endorsed Teacher;

⁷ If the District has sufficient data that a student’s English Language Proficiency is higher or lower than indicated by the valid and reliable grade-appropriate English Language Proficiency assessment, then the District will provide, as part of its submission under Paragraph 59, evidence of why the assessment does not accurately reflect the student’s English Language Proficiency.

5. are not receiving ESL instruction from an ESL-Endorsed Teacher who has completed the training required by Paragraph 22.b.
6. are not receiving Sheltered Content Instruction from a teacher who (i) has an ESL-endorsement, or (ii) has completed or is “on track” to complete the training required by Paragraph 22.a.
7. are not receiving Sheltered Content Instruction from a teacher who has completed the training required by Paragraph 22.b.

c. *Parent/Guardian 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 35.

d. *Staffing and Professional Development.*

- i. A report that includes for each school: the number of ELs by WIDA English proficiency level and disability status (e.g., 100 ELs, 25 L1, 25 L2, 25 L3, and 25 L4, and 20 with a disability); the number of teachers of ESL; the number of ESL teachers with an ESL endorsement; the number of special education teachers (a) with an ESL endorsement and (b) without an ESL endorsement; and the number of core content teachers (a) with an ESL endorsement and (b) without an ESL endorsement.
- ii. A report that includes the teachers, by name and subject, who have started, completed, or are on track to complete the professional development on sheltering strategies required by Paragraph 21.a including the hours of (a) training and (b) in-class support they received.
- iii. A report that includes the teachers, by name and subject, who have completed the professional development on teaching SLIFE required by Paragraph 22.b.
- iv. A principal/administrator training report that includes sign-in sheets, dates, agendas, and training materials for the training required by Paragraph 27.
- v. The District’s professional development plans for the upcoming school year related to the implementation of this Agreement (e.g., Shelter Content Instruction training for teachers, principal training), including each training’s date,

title, target audience, hours, mandatory/voluntary status, and facilitator. The United States will review these plans and provide the District with any feedback within 60 days.

e. *Curriculum and Resource Allocation*

A list of all new EL materials, including those specific to SLIFE, acquired by the District since the prior year's inventory.

f. *Monitoring & Program Evaluation*

- i. A list of all former EL students who have exited the District's EL programs and are under monitoring. For each student: student ID; exit date; number of years in the District's EL programs prior to exit; and English Language Proficiency assessment scores (composite and domain scores).
- ii. A copy of each District school's monitoring report developed and provided to the District's EL Department pursuant to Paragraph 38.
- iii. The District will complete the longitudinal study described in Paragraph 40 by the end of the 2023-24 school year and provide the results of that study to the United States by August 1, 2024.

61. **Abbreviated School Days – Annual Report Requirements**

a. *Students on Abbreviated School Days*

A report reflecting all students on Abbreviated School Days and the information described in Paragraph 50 for each student.

b. *Educational Opportunities for Students with Disabilities on Abbreviated*

School Days

A narrative describing the District's efforts to administer Abbreviated School Days in a manner that does not discriminate based on disability, including a specific description of the District's efforts to comply with Paragraphs 45-49.

c. *District's Monitoring of Abbreviated School Days*

A narrative describing the District's efforts to comply with Paragraphs 50-53 and any documents demonstrating compliance with those paragraphs such as copies of documents reflecting remedial measures taken in response to problems identified through the monitoring requirements of those paragraphs.

d. *Policies/Procedures and Training*

- i. Copies of all policies and procedures developed under Paragraph 54 and revised since the prior annual report.
- ii. The District's professional development plan and a list of all trainings required under Paragraphs 55-57 and any other training regarding Abbreviated School Days.

62. The District will notify the United States of all proposed substantive changes or additions to its EL programs, including those based on the results of the longitudinal study, and to its Abbreviated School Day policies, procedures, and practices. If the United States objects, the United States will notify the District in writing within 60 days.

V. ENFORCEMENT

63. The District will, for the duration of this Agreement, preserve and maintain all records and documents, including all electronically stored information, used to compile the above-referenced reports, and all other documents pertinent to its compliance with the Agreement, and will provide such information to the United States upon request.

64. The District understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, the District understands that for purposes of monitoring this Agreement, the United States, through its representatives and any consultant or expert it may retain, has the right, with at least 30 days advance notice, to conduct site visits, interview staff and students, and request such additional reports, information, or data as are necessary for the United States to determine whether the District has fulfilled the terms of this Agreement and is in compliance with the EEOA and ADA. The District will honor any such requests by making the requested reports, information, or data available to the United States for its review within 30 days. The United States also may speak directly 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, ADA and this Agreement.

65. 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 to enforce the EEOA and/or the ADA 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.

66. This Settlement Agreement will be binding upon the successor members of the Lewiston Public School Board and successor administrators. The District understands and acknowledges that this Agreement does not relieve the District from its other obligations under

the EEOA, ADA, or other federal laws. The United States, consistent with its responsibility to enforce the EEOA and ADA, retains the right to investigate and, where appropriate, initiate judicial proceedings concerning any future alleged violations of the EEOA and/or ADA by the District.

67. The Settlement Agreement will remain in effect until 60 days after the District submits its entire report due on November 1, 2024 per Paragraph 59. The parties may, upon mutual written agreement, amend this Settlement Agreement to address changed circumstances and/or to improve the delivery of services to ELs.

68. The following signatures indicate the consent of the parties to the terms of this Agreement, which is effective upon its mutual execution.

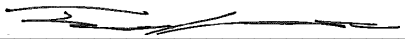
FOR THE UNITED STATES OF AMERICA:

DONALD E. CLARK
Acting United States Attorney
District of Maine


KRISTEN CLARKE
Assistant Attorney General

JOHN G. OSBORN
Assistant United States Attorney
Chief, Civil Division
District of Maine

SHAHEENA A. SIMONS
Acting Deputy Assistant Attorney General
Civil Rights Division



JAMES D. CONCANNON
Assistant United States Attorney
100 Middle Street
East Tower, 6th Floor
Portland, Maine 04101
(207) 780-3257
James.Concannon@usdoj.gov



WHITNEY PELLEGRINO, Acting Chief
RENEE M. WOHLNHAUS, Deputy Chief
NAVIN K. PANT, Trial Attorney
CHRISTOPHER AWAD, Trial Attorney
Educational Opportunities Section
Civil Rights Division
United States Department of Justice
150 M Street NE, Room 10.109
Washington, DC 20002
(202) 305-4242
navin.pant@usdoj.gov

Attorneys for the United States

Date: May 27, 2021

FOR LEWISTON PUBLIC SCHOOLS:



Megan Parks
Chairperson, Lewiston School Committee
Lewiston Public Schools
Dingley Building
36 Oak Street
Lewiston, ME 04240
(207) 795-4100

Date: May 26, 2021