

Settlement Agreement
Between
the United States of America
and
New Bedford Public Schools

PURPOSE

New Bedford Public Schools (the “District”) agrees to comply fully with this Settlement Agreement (“Agreement”). Pursuant to the Equal Educational Opportunities Act of 1974, 20 U.S.C. §§ 1701 *et seq.*, the District, like all public school districts, is required to take “appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.” 20 U.S.C. § 1703(f).

After opening an investigation into a complaint related to K’iche’-speaking students and parents, and thoroughly reviewing the District’s programs for English Learner (“EL”) students, primarily relating to K’iche’ speakers, the United States Department of Justice (“United States”) identified certain aspects of the District’s EL programs and practices that were not fully compliant with Section 1703(f) of the Equal Educational Opportunities Act. This Agreement addresses those areas of noncompliance.

The District and the United States share the goal of ensuring that the District’s EL students receive the instruction and support they need to become proficient in English and to participate equally in school. The parties enter into this Agreement as a means of alternative dispute resolution to avoid litigation and to promote judicial and governmental economy. The District agrees to implement the measures in this Agreement to resolve the noncompliance that the United States identified in its investigation. Where the District has already initiated remedial measures, this Agreement memorializes them. The Agreement’s effective date will be the date when both parties have signed the Agreement. The Agreement will remain in effect for three full school years after the effective date, subject to Paragraphs 27-34 below.

DEFINITIONS

- **Core Content** refers to elementary and secondary math, science, social studies, and English/language arts (e.g., an English, reading, or writing class).
- **Days**, as used in this Agreement, means calendar days except that if a deadline under this Agreement occurs on a weekend or holiday, the due date will be the next business day.
- **English Learner or ELs students** are students who require assistance to overcome language barriers that impede their equal participation in the District’s instructional programs.
- **English Language Proficiency** refers to a student’s ability to read, write, speak, and understand the English language as determined by the student’s scores on a valid and reliable English language proficiency assessment of each of the four language domains of speaking, listening, reading, and writing.
- **English Learner or EL Teachers** are instructional staff who teach core content or ESL classes to EL students, and all instructional staff implementing strategies tailored toward SLIFE and/or Newcomers.
- **English as a Second Language or ESL** is direct, explicit instruction about the English language that incorporates a systematic and developmentally appropriate approach to teaching language to EL students. ESL instruction addresses the listening, speaking, reading, and writing standards in the World-Class Instructional Design and Assessment (“WIDA”) English Language Development Standards adopted by the Massachusetts Department of Elementary and Secondary Education (“DESE”). Under this Agreement, ESL is taught by a teacher who holds an ESL teaching license from DESE.
- **Former EL student** refers to a student who was formerly an EL but subsequently met valid and reliable criteria for exiting the EL program. These criteria include demonstrating proficiency on a valid and reliable assessment of English Language Proficiency in all four language domains (reading, writing, speaking, and listening).
- **Limited English Proficient Parents or LEP Parents** refers to parents who have limited English proficiency in one or more of the four language domains of speaking, listening, reading, and writing. The term “parent” in this Agreement includes a legal guardian or other person who is legally responsible for the student’s welfare.
- **Major Languages** refers to the District’s most commonly spoken home languages among EL students other than English, and includes Spanish, Portuguese, Cape Verdean Creole, K’iche’, and any language spoken by 50 or more households in the District based on parental responses to questions on the home language survey or other registration materials each school year.
- **Newcomers** refers to any foreign-born students who have arrived in the United States within the last two years.

- **Qualified Interpreter and Qualified Translator** means an individual who, whether a paid District employee, contractor, or volunteer (subject to the restrictions of Paragraph 8): (a) is fluent in the languages in which the individual is communicating; (b) has a demonstrated competence to interpret and translate; (c) is trained in providing the interpretation or translation requested by the District; (d) is sufficiently knowledgeable in both languages of any specialized terminology needed to provide accurate interpretation or translation (e.g., special education terms); and (e) is trained in the ethics of interpretation and/or translation (e.g., the need for accuracy and confidentiality).
- **Sheltered Content Instruction** refers to a method for teaching EL students grade-level core content in English by integrating English language and literacy development into content area instruction. Sheltered Content Instruction systematically incorporates an array of teaching strategies that make core content classes more comprehensible and accessible to EL students while promoting their English language development. These strategies include, among others: teaching to language objectives that help EL students achieve the content objectives; building and activating background knowledge; explicitly teaching academic vocabulary; scaffolding instruction; differentiating instruction for EL students; grouping EL students by their English proficiency level; using supplementary and adapted materials, texts, and visual displays; implementing cooperative learning and group work; offering primary language support; providing comprehensible input and clarification; promoting academic discussions; teaching content-area reading and writing skills; using formative and summative assessments of language and content objectives with EL accommodations; and giving proficiency-level appropriate feedback on EL students’ language use and demonstration of content knowledge.
- **Students with Limited or Interrupted Formal Education or SLIFE** refers to a sub-group of EL students who are assessed as two or more grade levels below their grade-level and/or age-level peers in native language literacy and/or math skills, and where the performance gaps are the result of limited or interrupted formal education in their home countries.

GENERAL REQUIREMENTS

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

SPECIFIC REQUIREMENTS

I. Communication with LEP Parents

A. Identifying Language Access Needs of Parents

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

- a) Whether parents need oral communications in a language other than English through interpreters, and if so, their preferred language of communication; and
- b) Whether parents need written information in a language other than English through (i) translations, and if so, their preferred language for translations; or (ii) if they need written information to be orally interpreted.

3. Depending on the language access needs of a parent, the District will use Qualified Interpreters and Qualified Translators to interpret and/or translate the home language survey and other school registration and enrollment materials in the parent's preferred language of communication.

4. Upon enrollment, or whenever the District first becomes aware of a parent's language access needs in Paragraph 2, the District will enter that information into its student information system and make it available to all administrators and staff.

5. The District will, consistent with collective bargaining obligations, maintain staff members at its Family Registration Center to assist LEP parents with the enrollment process using Qualified Interpreters and materials translated by Qualified Translators, review responses to the home language surveys and other registration materials, and ensure the accurate identification of home languages in the District's student information system. Family Registration Center staff members will ensure that the student information system has accurate home language information about EL students.

6. The District will include a statement that is accurately translated into the Major Languages to its registration packet, its District and school-specific websites about the availability of interpretation and translation in multiple languages and how to request an interpreter or a translation. The District will prominently display a copy of this translated statement—providing notice in the Major Languages—in the Family Registration Center, the front office of each of its schools, and in any other public location where parents enroll or register students in the District's schools. The District will also use icons or pictures to communicate the availability of interpretation in K'iche' to ensure that LEP parents who speak K'iche' but have limited or no literacy in K'iche' or another Major Language understand the notice.

7. No later than 90 days after the effective date of this Agreement, and annually thereafter, the District will train all staff responsible for the registration and enrollment of new students on the following topics:

- a) How to determine whether a parent requires language assistance, and when and how to secure a Qualified Interpreter or Qualified Translator in a timely manner;
- b) How to assist parents in the proper completion of the District's Home Language Survey and other registration and enrollment forms; and
- c) Background on the K'iche' language and K'iche'-speaking population in New Bedford, and strategies to assist and encourage K'iche'-speaking parents to accurately disclose their home language(s).

B. Translation and Interpretation of Essential Information

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

9. The District agrees to give LEP parents, including K'iche' households, access to written notices, documents, and written communications (e.g., emails, text messages, and messages sent via communication applications) containing essential information¹ that the District's central offices and/or schools provide to other parents as follows:

¹ "Essential information" includes, but is not limited to: (a) report cards and other academic progress reports; (b) documents concerning academic options and planning; (c) documents concerning enrollment or registration; (d) documents concerning screening procedures requesting a student's language background, a parent's preferred language of communication, and the District's EL programs, including the process for refusing all or only specific EL services; (e) all parental consent forms, including requests for parent permission for student participation in District/school-sponsored programs and activities; (f) promotional materials and announcements distributed to students that contain information about school and District activities for which notice is needed to participate in such activities (e.g., testing, co-curriculars activities requiring an application, parent-teacher conferences, open houses); (g) special education documents, including IEPs, Prior Written Notices, Notice of Procedural Safeguards, Behavior Intervention Plans, and Functional Behavioral Assessments; (h) information about student discipline; (i) student or parent handbooks, including a notice of the right to request translation and interpretation services, how to make such requests, and how to file a complaint about language access services; (j) information related to public health and safety (e.g., vaccination requirements, health and safety protocols and announcements); and (k) any other written information describing rights/responsibilities of parents or students and benefits/services available to parents and students.

- a) For K'iche' households and other LEP parents who have expressed that they need translations in Major Languages, the District will use Qualified Translators to provide these parents accurately translated written information in those languages.²
- b) For K'iche' households and other LEP parents who have expressed that they need oral interpretation of written information instead of translations, the District will use Qualified Interpreters to timely communicate essential information to these parents in their preferred language. Consistent with federal and state laws that require written dissemination of certain information, the District will provide translated written information as necessary.
- c) For K'iche' households and other LEP parents who prefer to communicate with the District in a language other than a Major Language, the District will use Qualified Interpreters or Qualified Translators to timely communicate the essential information to these parents in their preferred language, either upon request or if the need for language assistance becomes apparent to the District.

10. To ensure that all schools can easily access translated information, the District will maintain and provide central office and school-based employees with electronic access to an accurate and current inventory of translated District-level and school-specific documents, as well as instructions for requesting translations of additional documents. The District will continue to expand the inventory to include translations of District-level and school-level essential information in every Major Language for which 50 or more LEP households have requested the need for translations in that language.

11. For meetings (whether in person or virtual) and phone calls during which essential information will be orally communicated, the District will communicate with K'iche' households and other LEP parents in the parent's preferred language using a Qualified Interpreter without undue delay.

12. To assist all schools in communicating with LEP parents, the District will provide principals with a list of the names, languages, and contact information for all District employees, contractors, and others who are Qualified Translators and Qualified Interpreters. The principals will maintain the list in a central location within their schools and will ensure school staff are informed on how to access the list.

13. Within 90 days of the execution of this Agreement, for all of its current students, the District will provide outreach to parents about their rights to language access. Specifically, the District will notify LEP households in a language they understand their right to request interpretation and translation services, how to make such requests, and how to file a complaint about language access services.

² The translation obligation applies to essential information wherever it is made available, including on the District's websites.

14. Within 90 days of the execution of this Agreement, the District will implement a system to track requests for translations and interpretations of documents and/or meetings containing essential information made to schools or the District, indicating who requested the translation or interpretation, the language requested, the date of each request, the name of the document or type of oral communication, whether the District granted the request, and the reason for granting or denying the request.

15. Within 90 days of the start of the 2022-23 school year, and annually thereafter, the District will train all staff who communicate with parents on the following topics:

- a) Staff obligation to review a parent's language access needs before scheduling meetings/calls with parents and sending out written information;
- b) What information must be translated or interpreted for LEP parents;
- c) What constitutes a Qualified Interpreter and Qualified Translator under this Agreement;
- d) When and how to obtain Qualified Interpreters and Qualified Translators;
- e) Where to find accurate and up-to-date translations of documents;
- f) Staff obligation to record all requests for interpretation and translation support in a District database;
- g) Background on the K'iche' language, including specific language access needs for K'iche'-speaking LEP parents; and
- h) Other best practices for communicating with LEP parents.

16. Within 60 days of the effective date of this Agreement, the District will provide the United States its proposed training materials for the training required under Paragraph 15 for review and approval. The United States will review and provide feedback within 30 days.

II. EL Instruction: Classroom Observations and Professional Development

17. The District will develop a classroom observation process and teacher feedback tool, outside of the collectively bargained and state controlled educator evaluation process, that principals, other administrators, and instructional coaches will use in all schools to provide feedback to EL Teachers. The process will include full-lesson observations and post-observation debriefings led by SEI-endorsed principals, administrators, and/or EL coaches to share constructive feedback. Within 60 days of the Agreement's effective date, the District will provide its proposed classroom observation plan and teacher feedback tool to the United States for review and approval, and the United States will then provide its comments to the District within 60 days.

18. The District will conduct at least one classroom observation annually of each EL Teacher, and additional observations depending on the EL Teacher's professional development plan referenced in Paragraph 19.

19. For each EL Teacher, within 30 days of the District's classroom observation and debriefing discussion with the teacher, the District will develop a professional development plan (or revise an existing one) that will identify specific areas for improvement and require trainings and/or coaching to address them. Depending on the EL Teacher's professional development needs, the District will ensure that each EL Teacher receives training on effective strategies related to one or more of the following topics:

- a) Sheltered Content Instruction for EL students and promoting their English language development in all four language domains, consistent with the definition of Sheltered Content Instruction.
- b) Planning, delivering, and adapting content for EL students within the context of standards-based lesson planning, instruction, and assessment.
- c) Student engagement and the appropriate role of teacher-centered direct instruction.
- d) Academic rigor that challenges students cognitively regardless of their English language proficiency.
- e) SLIFE and Newcomers, including specific strategies to ensure students of K'iche' background overcome English language barriers.
- f) Culturally responsive instruction, including learning conditions, processes and activities that help foster a positive learning environment to help EL students overcome English language barriers.

20. The professional development plans in Paragraph 19 will provide EL Teachers with sufficient opportunities to model, practice, and receive feedback on their use of such strategies. The District will develop training workshops focused on demonstrations, peer observations, and analysis of best practices for each of its EL programs. The District will provide its proposed training to meet the requirements of Paragraph 19 within 90 days of the Agreement's effective date and then each year by October 1. The United States will provide its feedback to the District within 60 days.

21. In the 2022-23 school year, the District will provide all EL Teachers at least three hours of an initial training giving an orientation on the languages and communities represented within New Bedford, including the K'iche' language and K'iche' community, and providing strategies and instructional enhancements to help students of those backgrounds overcome language barriers to ensure equal participation in the District's instructional programs. The initial training will focus on the specific needs of K'iche' background students. In the 2023-24 and 2024-25 school years, the District will provide all EL Teachers at least two hours of annual training focused on strategies and instructional enhancements to help students of K'iche'

background overcome language barriers.³ The District will provide its proposed training to the United States for review and approval within 60 days of the Agreement's effective date and then each year by October 1. The United States will provide its feedback to the District within 60 days.

22. The District will provide principals, instructional coaches, and all other administrators who provide feedback to EL Teachers under Paragraph 17 with annual training on: their responsibilities under this Agreement; how to identify and support effective ESL, Sheltered Content Instruction, teaching strategies for SLIFE and Newcomers; how to use the classroom observation tool in Paragraph 17 to provide constructive feedback to teachers during and after classroom observations; and strategies to ensure that EL students of K'iche' background overcome language barriers. The District will provide its proposed administrator training to the United States for review and approval within 60 days of the Agreement's effective date and then each year by October 1. The United States will provide its feedback to the District within 60 days.

III. Program Monitoring and Evaluation

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

24. The District will monitor all schools for compliance with this Agreement. To that end, the District will develop and implement school-level audit procedures to evaluate the quality and effectiveness of the EL programs at each school and District-wide, 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 data required by Paragraph 23 to ensure that each student receives the appropriate amount and type of services and progresses academically.

³ In the 2023-24 and 2024-25 school years, the District will also provide the initial three-hour training to all EL Teachers who did not complete the training in the 2022-23 school year.

25. The District will evaluate the effectiveness of each of its EL programs to determine whether they are overcoming students' language barriers within a reasonable period of time and enabling EL students to participate meaningfully and equally in all of the District's educational programs. To that end, the District agrees to conduct a longitudinal cohort analysis of its Sheltered Content Instruction, ESL, SLIFE, and Newcomer programs at the elementary, middle, and high school levels by disaggregating and monitoring the following data by current, former, and never-EL students for each EL program used by the District: standardized test scores, exit rates, dropout rates, graduation rates, retention-in-grade rates, English Language Proficiency assessments, 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, including EL students, former EL students, and never-EL students, who were enrolled in kindergarten, third grade, sixth grade, and ninth grade in the 2021-22 school year and who remain enrolled in the District over the term of this Agreement. The District will also disaggregate data for EL students and former EL students of K'iche' background in this cohort. The District will use the results of its longitudinal analysis to inform EL program decisions and ensure the effectiveness of every EL program.

REPORTING

26. In addition to any reporting requirements provided above, the District will provide the United States annual compliance reports in electronic format. The District will provide an initial report of the information in Paragraphs 26.a-b each year by October 1, but for the 2022-2023 school year only, by November 18, 2022. The District will provide a full report of the information in Paragraph 26.a-f each year by July 1. If any required information is available in a document that the District already has prepared to comply with federal or state laws or regulations, the District may include the document in its reports and indicate the section of the report to which the document applies.⁴

a) *Identification of EL Students, EL Services, LEP Parents*

For each student who is a current EL, opt-out EL, or former EL: (a) student ID number; (b) school; (c) grade; (d) EL status [active, opt-out, former]; (e) native/home language, as indicated on the home language survey; (f) race/ethnicity; (g) disabilities (if any); (h) gifted status; (i) most current WIDA Overall English Language Proficiency level; (j) the name and type of each EL service provided in the instructional day (e.g., ESL Level 1, SEI math); (k) Newcomer (Y or N); (l) SLIFE (current, former, never); (m) amount of EL services received (e.g., 45 mins/day); (n) number of years identified as EL; (o) long-term EL student (Y or N); (p) whether the student has an LEP parent; (q) whether the LEP parent needs interpretation of oral communications; (r) whether the LEP parent needs translation of written information or has requested oral

⁴ The District will provide all reports, plans, and other items required by this Agreement electronically to counsel for the United States via email, if feasible, and will encrypt or password-protect all files containing personally identifiable information. For voluminous data or files, the District will provide such information electronically via other means as agreed to by the United States (e.g., using the Justice Enterprise File Sharing platform).

interpretation of written information (indicate which); (s) the LEP parent's preferred language of communication with the District.

b) *Parent Communications*

1. An explanation of the District's efforts to comply with Paragraphs 2-16.
2. A copy of the notices required in Paragraph 6 about the availability of interpretation and translation in each of the Major Languages.
3. For the training required in Paragraph 7, (i) the date of the training; (ii) the names and titles the person(s) conducting the training; (iii) the names and titles of every attendee; and (iv) all training agendas and materials.
4. A report reflecting the information collected concerning requests for translations and interpretations under Paragraph 16.
5. 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 under Paragraph 10.

c) *Class Observations and Professional Development*

1. A report that reflects all class observations and post-observations conducted under Paragraphs 17-18, by date, teacher, school, subject, and the name and position of the person who conducted the observation.
2. Copies of all professional development plans developed or revised under Paragraph 19.
3. A report that includes the teachers, by name, subject and school, who have completed the annual professional development required by Paragraph 21.
4. A report that includes the principals, instructional coaches, and other administrators who have completed the training required by Paragraph 22.

d) *Monitoring & Program Evaluation*

1. A copy of each District school's monitoring reports developed under Paragraphs 24.
2. The District will complete the longitudinal study described in Paragraph 25 by the end of the 2024-2025 school year and provide the results of that study to the United States by August 1, 2025.

ENFORCEMENT

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

28. The District will provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. With reasonable advance notice, the United States, through its representatives and any consultant or expert it may retain, may conduct site visits (in person or remotely), observe EL student instruction (in person or remotely), interview staff and students, and request any additional reports, information, or data necessary to monitor the District's compliance with this Agreement and with the Equal Educational Opportunities Act. The District will make the requested reports, information, or data available for review within 30 days. The United States also may speak directly, without District counsel, 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 Equal Educational Opportunities Act and this Agreement.

29. In the event of a breach by the District of this Agreement, the United States may initiate judicial proceedings to enforce the Equal Educational Opportunities Act 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.

30. This Settlement Agreement will be binding upon the successor members of the New Bedford School Committee and successor administrators. The District understands and acknowledges that this Agreement does not relieve the District from its other obligations under the Equal Educational Opportunities Act or other federal laws. The United States, consistent with its responsibility to enforce the Equal Educational Opportunities Act, retains the right to investigate and, where appropriate, initiate judicial proceedings concerning any future alleged violations of the Equal Educational Opportunities Act by the District.

31. The Settlement Agreement will terminate 60 days after the District submits its complete report due on October 1, 2025 per Paragraph 26 provided that the District has demonstrated substantial compliance with all provisions of this Agreement for a period of one year.

32. The burden will be on the District to demonstrate substantial compliance with each of the provisions of this Agreement. Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, will not constitute failure by the District to maintain substantial compliance. At the same time, temporary compliance during a period of sustained non-compliance will not constitute substantial compliance.

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

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

For the United States of America:

KRISTEN CLARKE
Assistant Attorney General

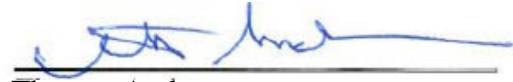


SHAHEENA A. SIMONS, Section Chief
NAVIN K. PANT, Special Litigation Counsel
Educational Opportunities Section
Civil Rights Division
United States Department of Justice
150 M Street NE
Washington, DC 20002
(202) 353-5579
navin.pant@usdoj.gov

Attorneys for the United States

Date: September 15, 2022

For New Bedford Public Schools:



Thomas Anderson
Superintendent of Schools

Date: September 15, 2022