



U.S. DEPARTMENT OF JUSTICE

*United States Attorney's Office
District of Rhode Island*

**Civil Rights Division
Educational Opportunities Section**

USAO DJ 2016V256

CRT DJ 169-66-10

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March 8, 2018

By Electronic and First Class Mail

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Re: English Learner Programs and Practices in the Providence Public School District

Dear Mr. Ruggerio and Ms. Lombardo:

We write to provide notice related to the Department of Justice's investigation of the Providence Public School District's ("District") English Learner ("EL") programs and practices under Section 1703(f) of the Equal Educational Opportunities Act of 1974 ("EEOA"), 20 U.S.C. § 1703(f), which requires school districts to take "appropriate action to overcome language barriers that impede equal participation by [their] students in [their] instructional programs." On November 21, 2016, we notified the District that we were opening this investigation in response to complaints that the District was not meeting its obligations to provide language acquisition services to its EL students or meaningful communications to Limited English Proficient ("LEP") parents. In our opening letter and subsequent correspondence, we have requested information regarding the District's EL programs and practices regarding EL students and LEP parents.

As part of our investigation, we also visited the following sites on April 24-28, and May 9-10, 2017: Nathanael Greene Middle School; Carl G. Lauro Elementary School; Central High School; Providence Career & Technical Academy; Roger Williams Middle School; Young & Woods Elementary School; George J. West Elementary School; Anthony Carnevale Elementary

School; Mount Pleasant High School; Pleasant View Elementary School; Alan Shawn Feinstein Elementary at Broad Street; Vartan Gregorian Elementary School; the District's central offices; and the District's Enrollment Center. Naomi Migliacci, the United States' consultant with expertise in K-12 EL programs, instruction, and practices, joined us for all site visits.

In accordance with our statutory requirements under the EEOA, we are notifying the District of the "conditions which, in [our] judgment, constitute . . . violation[s]" of the EEOA. 20 U.S.C. § 1710. We also are notifying the District of the facts supporting our judgment, and steps to remedy the conditions. *See id.* In short, these conditions include the District's: 1) placement of hundreds of ELs in schools without EL program services without voluntary and informed waivers of service; 2) use of an educationally unsound EL program; 3) inadequate implementation of several of its EL programs; 4) failure to staff its EL programs with qualified teachers; 5) unnecessary segregation of some ELs; 6) insufficient materials at certain schools; 7) inadequate principal training; 8) failure to identify all ELs in a timely way; 9) inadequate communications with LEP parents; 10) failure to provide ELs with equal opportunities to participate in specialized programs; 11) inappropriate criteria for exiting ELs from EL programs and inadequate monitoring of exited ELs; and 12) failure to properly evaluate its EL programs for effectiveness. Together, these practices prevent EL students from learning English and accessing their other core subjects, setting them up to struggle and too often to fail.

Before discussing these conditions in detail below, we wish to extend our sincere thanks to the Superintendent, who cooperated throughout our investigation, and the District employees, particularly EL Director Soledad Barreto, who helped compile the information we requested and met with us during our onsite visits. We share the District's desire to work collaboratively to improve its EL programs. We look forward to discussing these conditions and the enclosed proposed settlement agreement with you and any District personnel you deem appropriate.

BACKGROUND

The District operates 42 schools, including 23 elementary schools, 7 middle schools, 10 high schools, and two public charter schools. These schools enroll almost 24,000 students, approximately 33% of whom are ELs. Nearly 60% of the District's students come from homes where English is not the primary language spoken. District families speak 31 different languages, the most common being Spanish, Arabic, Swahili, Creole, Portuguese, and Khmer.

The District provides nine different EL programs, which it identifies as: 1) English as a Second Language ("ESL")/Sheltered Instruction ("Sheltered ESL"); 2) Integrated ESL; 3) ESL Push-in; 4) ESL Newcomer; 5) Collaborative ESL; 6) Transitional Bilingual; 7) Developmental Bilingual; 8) Dual Language; and 9) the Consultation Model. The first five programs are similar in that each includes daily ESL instruction by an ESL-certified teacher.¹ The two bilingual programs and the dual language program provide instruction in Spanish and English by bilingual-certified teachers. ELs in the Consultation Model do not receive any instruction from

¹ The term "ESL-certified teacher" in this letter includes elementary and secondary teachers who hold (1) a Rhode Island certificate for the level and subject in which he or she teaches, and a Rhode Island endorsement as an ESL teacher or a Bilingual teacher or Content Area teacher of ELs or (2) the Rhode Island ESL certificate. *See* Rhode Island Department of Education ("RIDE") Regulation L-4-2(11).

an ESL-certified teacher or a bilingual-certified teacher. Instead, these ELs receive all of their instruction from general and/or special education teachers who only consult with an ESL-certified teacher.

CONDITIONS IDENTIFIED

School districts must “take appropriate action to overcome language barriers that impede equal participation by [their] students in [their] instructional programs” by, *inter alia*, providing services to EL students to help them learn English. 20 U.S.C. § 1703(f); *see also Lau v. Nichols*, 414 U.S. 563, 566-69 (1974) (holding that a school district had violated Title VI and its implementing regulations by failing to provide any EL services to many of its EL students). Where a District does provide a program of EL services, we evaluate the program by applying the seminal three-pronged analysis from *Castañeda v. Pickard*, 648 F.2d 989, 1009-10 (5th Cir. 1981). These prongs assess “the appropriateness of a particular school system’s language remediation program . . . under § 1703(f)”: (1) whether the chosen program is based upon sound educational theory or principles; (2) whether the program is reasonably calculated to implement effectively the educational theory (*i.e.*, whether the school district is using “adequate . . . practices, resources and personnel necessary to transform the theory into reality”); and (3) whether, after a period of time sufficient to give the program a legitimate trial, the results of the program show that language barriers are in fact being overcome within a reasonable period of time. *Id.* This analysis also considers whether, in terms of design, implementation, and results, the EL program is “reasonably calculated to enable [EL] students to attain parity of participation in the standard instructional program within a reasonable length of time after they enter the school system.” *Id.* at 1011.

As discussed in further detail below, in our judgment the District has failed to meet these legal standards, and the conditions and supporting facts identified below demonstrate violations of the EEOA. *See* 20 U.S.C. § 1710. These failures explain at least in part why over 750 of the District’s EL students still lack proficiency in English 6 to 13 years after their enrollment.

1. The District Has Placed Hundreds of ELs in Schools that Lack EL Services Without Obtaining Voluntary and Informed Parental Waivers of Such Services

As the Supreme Court made clear in *Lau* and Congress confirmed through the EEOA, “there is no equality of treatment merely by providing [EL] students with the same facilities, textbooks, teachers, and curriculum” as non-EL students, “for students who do not understand English are effectively foreclosed from any meaningful education.” *Lau*, 414 U.S. at 566; *see Castañeda*, 648 F.2d at 1008 (“the essential holding of *Lau* . . . has now been legislated by Congress [in Section 1703(f) of the EEOA]”). To afford equal educational opportunities to EL students, districts must provide them with specialized instructional services designed to overcome their language barriers through an educationally sound EL program. *See Lau*, 414 U.S. at 566 (requiring specialized instruction for ELs); *Castañeda*, 648 F.2d at 1009 (requiring that such services be provided through an educationally sound EL program). While parents may waive their child’s EEOA right to such services, this decision must be informed and voluntary. *See, e.g., Town of Newton v. Rumery*, 480 U.S. 386, 393 (1987) (any waiver of statutory right of action must “be the product of an informed and voluntary decision”); *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52 n.15 (1974) (waiver must be “voluntary and knowing”).

Our review uncovered that the District has failed to take “appropriate action to overcome language barriers” by placing hundreds of ELs in schools and programs that lack the services the students need, without obtaining voluntary and informed waivers of services from their parents. *See* 20 U.S.C. § 1703(f); *Serna v. Portales Mun. Schs.*, 499 F.2d 1147, 1150 (10th Cir. 1974) (discussing the negative effects of placing ELs in a class taught in English without EL services). When parents sought to enroll their children in these schools, the District improperly counseled parents that they would have to waive EL services to attend. The District then designated most of these students as “Eligible but not Enrolled” (“ENE”) in EL programs. In certain instances, some of the schools without EL services (e.g., Pleasant View) offered specialized special education programs, forcing parents of children with disabilities to choose between receiving appropriate special education services or EL services for their children.

The lack of available seats in EL programs at many of the District’s schools encourages parents to waive EL services in order to enroll their “ENE” children in those schools. At least one teacher complained to the District about not providing EL services to ENE students and reported that one such student was “struggling to make progress” and could “benefit from other ELL services not currently available to him.” *See* Dist. Response #13, provided Apr. 13, 2017. Though the parent agreed to put the child into EL services, the teacher reported that the child would have to wait for a seat to open up in an EL class. The District still has hundreds of ENE students without EL services or voluntary and informed waivers and has acknowledged that it needs to take steps to offer EL services to these students as seats in EL programs become available.

We also learned that the District improperly secured uninformed waivers of service for some ELs with disabilities by asking their LEP parents to sign waiver forms provided only in English. Some LEP parents challenged the legality of this practice, and the District partially resolved their complaints by agreeing to translate the waiver forms and to stop asking LEP parents to waive EL services. Despite these positive changes, we observed that the forms that District staff use with parents to discuss program options remain inaccurate and misleading.² As a result, the District still fails to provide parents with the information they need to make voluntary and informed decisions about the EL programs they may choose or waive.

Each of these inappropriate EL placement and waiver practices violates Section 1703(f) of the EEOA. These practices unfairly deprive ELs of the right to the services they need to attain proficiency in English and have an equal opportunity to participate in the District’s programs.

2. The District’s Consultation Model is not Educationally Sound

To address the fact that many schools lacked EL programs or available seats in such programs, the District created the Consultation Model and introduced it at these schools in the 2015-16 and 2016-17 school years. Though the District calls this Model an EL program, ELs in this Model remain with regular or special education teachers who are not qualified to serve them.

² *See* forms entitled “Language Acquisition Program Options K-12” and “Notification of Initial EL Identification and EL Services,” provided in hard copy May 9, 2017. For example, the waiver on the Notification form states, “I understand that my child will be placed in ESL,” even though many ELs end up without ESL. *See* Sections 2 & 3.

A school district's EL program must be "informed by an educational theory recognized as sound by some experts in the field." *Castañeda*, 648 F.2d at 1009; *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 135 (3d Cir. 2017) (same). The Consultation Model is not an educationally sound EL program, as explained below, and by placing at least 372 ELs at 16 different schools into that Model in the 2016-17 school year,³ the District violated the EEOA.

Under the District's Consultation Model, which is not among the six EL program models recognized by the State regulations, many ELs with disabilities, and other ELs with literacy scores above 2.5 or 2.9 on the ACCESS (an English proficiency test), receive no instruction from an ESL-certified teacher or a teacher who is adequately trained to address their language needs.⁴ Instead, the District's Model places these ELs with special education or general education teachers, who are expected to consult only once every eight weeks with an ESL-certified teacher. The District has not identified any educationally sound theory of second language acquisition that supports its minimalist consultation-only approach for these ELs, nor has the District identified any experts who recognize its Model as sound. *See Castañeda*, 648 F.2d at 1009. We are not aware of—and the District has not provided—any evidence or support to show that ELs with disabilities or ELs with literacy scores exceeding 2.5 or 2.9 on ACCESS need not receive ESL or other direct EL services from teachers qualified to provide those services, such as an ESL-certified teacher. *See Issa*, 847 F.3d at 135-37 (finding district failed to provide expert or other evidence to justify its EL program under prong one). ELs with such scores and many ELs with disabilities have only limited levels of English and still require EL services to become proficient in English and to meaningfully access the core curriculum.

Despite these students' clear need for specialized instruction to overcome their language barriers, the District's Consultation Model fails to provide EL students any direct EL services from an instructor qualified to provide those services and is devoid of any curriculum that is distinct from the regular education curriculum. As recognized by the Supreme Court in *Lau* and Congress in Section 1703(f) of the EEOA, placing thousands of EL students in regular education classes without appropriate English language instruction or teachers qualified to provide that instruction "effectively foreclose[s]" an equal and meaningful opportunity to participate in a school's instructional programs. *Lau*, 414 U.S. at 566 (1974); *Castañeda*, 648 F.2d at 1008. ELs placed in regular and special education classes under the Consultation Model are likewise denied an equal educational opportunity under the EEOA.

Though the State regulations offered the District many educationally sound EL programs from which to choose, the District failed to provide these programs to the 372 EL students in the

³ *See* Dist. Response #1, provided July 24, 2017. The District identified the following ten elementary schools as providing Consultation-only services to ELs: Pleasant View, Feinstein, Gregorian, MLK, Webster Ave, Woods & Young, Kizirian, Bailey, Carnevale, and West. *See* District Response #1, provided July 24, 2017. This response also identified four secondary schools: Hope High School, West Broadway Middle School, Academy for Career Exploration, and Alvarez High School. *Id.* Our visits to Central High School and Providence Career & Technical Academy revealed ELs with disabilities receiving only the Consultation Model, bringing the number of high schools to six. The Evolutions and 360 high schools also appear to use this model and a Collaborative ESL program, *see* EL Handbook at 33, but we did not visit the schools.

⁴ District guidance provides that ELs with literacy scores above 2.5 receive the Consultation Model in schools that offer Sheltered ESL or Integrated ESL programs, and that ELs with literacy scores above 2.9 receive the Consultation Model in schools that offer Collaborative ESL. *See* Dist. Response #8, provided May 9, 2017.

Consultation Model. See R.I. Admin. Code 21-2-45:L-4-2(16-22) (“R.I. EL Regs”) (allowing bilingual education, ESL, Newcomer, Sheltered Content, Collaborative ESL, and dual language programs). Moreover, the District’s Consultation Model conflicts with the State regulations providing that ELs with overall scores of 1 to 2.9 on the ACCESS “must receive a minimum of 3 periods (or the equivalent) of ESL instruction a day;” those with overall scores of 3 to 4.9 “must receive a minimum of 2 periods (or the equivalent) of ESL instruction a day;” and those scoring a 5 or 6 “must receive a minimum of 1 period (or the equivalent) of ESL instruction a day.” See *id.* at L-4-7; see also, *id.* at L-4-2(19) (requiring teachers who provide ESL instruction to “meet Rhode Island certification and/or endorsement requirements for ESL instruction”); *id.* at L-4-2(18) (requiring “certified and/or endorsed ESL teacher” to provide ESL instruction to ELs in a Collaborative program). The District provides ELs in its Consultation Model with no periods of ESL at all, instead relegating them to an unsound and unproven program. See *Castañeda*, 648 F.2d at 1009-10; *Serna*, 499 F.2d at 1150 (discussing negative effects of placing ELs in classes without services).

3. The District Fails To Adequately Implement Its Consultation Model

Even if the District could produce evidentiary support for its Consultation Model’s theory that a general or special education teacher can provide ESL based on consultations with an ESL-certified teacher, the District has not committed adequate “practices, resources and personnel necessary to transform [this] theory into reality.” *Castañeda*, 648 F.2d at 1009-10.

According to the District’s EL Director, “[t]he Consultation Model requires a certified ESL or Bilingual teacher to consult with the classroom teacher responsible for delivering instruction in order to provide the teacher with the accommodations and strategies necessary to support the [EL] student in making content comprehensible and increasing their academic English proficiency.” Barreto Aff. ¶ 6, Aug. 1, 2016. The model also expects general and special education teachers who are teaching ELs to use “effective ESL strategies in the content classes.” See *English Language Learner Handbook: A Resource for Providence Educators* at 33 (“EL Handbook”). However, the District has not required the general or special education teachers to have adequate training on ESL or sufficient consultations with ESL-certified teachers to ensure that the ELs actually receive ESL and meaningful access to their core content instruction. As the case law makes clear, districts must have teachers who are adequately trained to implement their chosen EL programs. See *Castañeda*, 648 F.2d at 1013; *Keyes v. Sch. Dist. No. 1, Denver*, 576 F. Supp. 1503, 1516-17 (D. Colo. 1983). We discovered that the District’s general and special education teachers in the Consultation Model do not receive adequate training and support. Indeed, the District expects teachers using this model to consult only once every eight weeks for an unspecified amount of time, and does not enforce even this minimal expectation.

Our interviews with teachers implementing the Consultation Model and reviews of the District-produced consultation logs reveal only cursory interactions, often by email, during chance encounters, or during a few scheduled minutes before or after school. For example, an ESL-certified teacher at Central revealed during an interview that he had consulted only once during the school year with the teachers of the EL students with disabilities on his caseload. In-person meetings are rare, and the sample logs from West, Providence Career & Technical Academy, and Pleasant View did not capture meaningful information about ELs’ needs or ESL

strategies to address them. None of the logs demonstrated that the ESL-certified teacher is adequately identifying “effective ESL strategies” or “specific language development accommodations or modifications that ... ensure ... meaningful access to the instruction.” EL Handbook at 33.

As a result of the District’s inadequate training, consultation practices, and guidance, at least 372 ELs in the Consultation Model in the 2016-17 school year were denied the ESL they need to achieve proficiency in English within a reasonable amount of time. *See supra* note 4. These students include, for example, a tenth grader at the Academy for Career Exploration who has been in the EL program for approximately 11 years and only obtained a 2.5 composite score on ACCESS. These students also include many ELs with disabilities, who face the dual challenge of trying to learn their subjects with a disability and a language barrier. Indeed, 74% of the 202 ELs in self-contained classrooms did not receive ESL, a failure that is likely attributable to the District’s guidance regarding the Consultation Model. This guidance also led schools to deny ESL to ELs with literacy scores above 3 – even when those schools’ ESL-certified teachers likely had the capacity to provide some of these students with ESL (e.g., Carnevale, Broad Street, and Vartan Gregorian).⁵

4. The District Fails to Adequately Implement the Collaborative ESL Program

The District has failed to adequately implement its Collaborative ESL program. Under this District-created program, an ESL-certified teacher (“Collaborative ESL Teacher”) provides 30 to 60 minutes of ESL a day to ELs with ACCESS literacy scores below 3.0. The Collaborative ESL Teacher also works with one or more of these EL students’ general education teachers “to collaboratively plan instruction using effective ESL strategies in the content classes.” EL Handbook at 33. This program is supposed to provide ELs “grade-level, core content courses taught in English using instructional strategies that make the content concepts accessible to them and promote the development of academic English.” *Id.* However, as explained below, the District has failed to require the training, collaboration, or co-planning needed to implement its Collaborative ESL program. *See Castañeda*, 648 F.2d at 1012-13 (finding training program inadequate). The District also has failed to provide adequate amounts of ESL to ELs in this program.

The District required its Collaborative ESL Teachers to attend six hours of training in the 2016-17 school year on implementing the program. The District does not, however, require the general or special education teachers who deliver the Collaborative ESL program to receive training on the program or ESL strategies, nor does it evaluate whether the teachers know the instructional strategies needed to make the core content accessible to ELs and promote their English development. *See Castañeda*, 648 F.2d at 1013 (requiring teachers who deliver EL instruction to be adequately trained to provide such instruction and an adequate evaluation of whether they learned the instructional skills needed to deliver the EL program); *Keyes*, 576 F. Supp. at 1514 (“No special training is required for ESL teachers and there is no state endorsement for ESL teachers. There is no formal district procedure to assess them for language proficiency or ESL teaching skills.”); *see also* R.I. EL Regs at L-4-12. The District’s training

⁵ We are aware of at least one ESL-certified teacher who provided ESL to ELs enrolled in the Consultation Model; however, such services are neither provided at the direction of the District nor required as part of this model.

records show that it *offered* one- to four-hour-long trainings on the program at a handful of the schools using the program: Pleasant View, George West, Carnevale, Bailey, and Gregorian. Even for those general and special education teachers who voluntarily attended this training, this is not enough time to prepare a teacher to use ESL strategies all day and all school year long. *See Castañeda*, 648 F.2d at 1013 (discussing how district’s teachers, who took the state’s 100-hour training and some district training, were not qualified to provide bilingual services and requiring state and district “to devise an improved in-service training program and an adequate testing or evaluation procedure to assess the qualifications of teachers completing this program”); *Keyes*, 576 F. Supp. at 1514, 1517 (finding teachers’ 18-hour in-service training and ESL tutors’ two-day training and two-day class observations inadequate because “[t]he ESL component of the program is being delivered by ESL designated instructors who . . . *receive very little training in ESL theory and methodology*”) (emphasis added).

The District also failed to ensure adequate planning time for teachers to implement the Collaborative ESL program. Many Collaborative ESL Teachers said that they had limited uninterrupted planning time. At most schools this planning time did not coincide with that of the general or special education teachers with whom they were expected to co-plan instruction for ELs. For example, one Collaborative ESL Teacher at Carnevale reported meeting only once a month for one class period with math teachers and once a month for a class period with reading teachers.

The District also fails to provide adequate ESL to ELs in the Collaborative ESL program. First, some Collaborative ESL Teachers reported that they do not provide ESL to all of their ELs every day. *See* R.I. EL Regs at L-4-7 (requiring daily ESL instruction for all ELs). Second, some Collaborative ESL Teachers noted that they initially encountered reluctance, and even pushback, from certain general education teachers when they tried to provide push-in ESL or other EL services (e.g., Carnevale, Pleasant View, Broad Street). This reluctance may stem from inadequate training about the program. Third, it is inappropriate for the District to deny ELs with overall ACCESS scores of 1 to 3 the three periods of daily ESL they are guaranteed by R.I. EL regulation L-4-7. *See* EEOA § 1703(f) (requiring both states and school districts to “take appropriate action to overcome language barriers”).⁶

As a result of these problems in implementation, the District denies ELs in the Collaborative ESL program meaningful access to their grade-level curriculum and adequate amounts of ESL in violation of the EEOA. *See Castañeda*, 648 F.2d at 1011-13; *Keyes*, 576 F. Supp. at 1517. The harmful effects of this denial over time are clear. Many of the ELs who have yet to achieve proficiency in English even after six to nine years in District schools currently attend or previously attended schools that now offer Collaborative ESL but used to have no EL program. These long-term ELs still need ESL and support in their core content courses, but their EL programs have not provided the services that they need to succeed.

⁶ Rhode Island has chosen to meet its EEOA obligation to ensure school district’s compliance with Section 1703(f) by requiring a certain number of periods of ESL. *See, e.g., Idaho Migrant Council v. Board of Education*, 647 F.2d 69, 71 (9th Cir. 1981) (state’s department of education, board of education, and superintendent of public instruction have “an obligation to supervise the local districts to ensure compliance”); *U.S. v. Yonkers*, 96 F.3d 600, 620 (2d Cir. 1996) (same).

5. The District Fails to Provide Adequate ESL in its Other ESL Programs

The District also fails to provide adequate ESL in its Sheltered, Integrated, Newcomer, and Push-in ESL programs in violation of the EEOA. *See Castañeda*, 648 F.2d at 1010-11 (EL programs must be “implemented through the use of adequate techniques” that result in ELs’ overcoming their language barriers within a reasonable length of time); *see also Rios v. Read*, 73 FRD 589, 595 (E.D.N.Y. 1977) (“An inadequate program is as harmful to a child who does not speak English as no program at all.”). To provide adequate ESL, school districts typically group ELs for ESL based on their English proficiency level and provide more ESL to the least proficient ELs. This approach is consistent with the State regulations requiring that Level 1 and 2 ELs receive three periods of ESL a day, while Level 3 ELs receive two periods, and Level 4 and 5 ELs receive only one. *See* R.I. EL Regs at L-4-7. The District’s EL Handbook also embraces this grouping concept, noting, with respect to the Sheltered ESL program, that “when possible and appropriate, students will be platooned by proficiency level so that educators may address the specific language development needs of students.” EL Handbook at 29.

Despite these requirements, we found that many ELs receive inadequate ESL. For example, at Mount Pleasant, approximately 43 ELs with ACCESS composite scores of 1.9 or lower, who should receive three periods of ESL a day, received ESL only three days a week for only 44 to 56 minutes. *See* R.I. EL Regs at L-4-7. Similarly, approximately 76 ELs at Gilbert Stuart with ACCESS composite scores of 3 or lower, who should get three periods of ESL a day, received only 46 to 58 minutes a day. *See id.* We also saw schools that provided ESL based on students’ grade levels rather than their English proficiency levels. This inappropriate practice resulted in many ESL classes of ELs with ACCESS scores ranging from 1 (i.e., beginner) to 4.9 (i.e., almost proficient), in which teachers could not adequately meet the language needs of ELs at such disparate levels (e.g., Greene, DelSoto, and Bishop).

We also found schools that failed to provide any ESL at all to students who were enrolled in District programs that require ESL. According to District guidance, ELs in the Sheltered ESL program should be placed in ESL classes with an ESL-certified teacher. *See* EL Handbook at 29. In practice, however, the District places ELs who are enrolled in this program in general education classes without ESL. For example, at Broad Street the District placed some newcomer ELs and other ELs with low scores in general education classes that either do not provide ESL or provide inadequate ESL. We also learned that some ELs, originally placed in Sheltered ESL classes due to their low English proficiency levels, have been “bumped” to general education classrooms without ESL to make space for newly enrolling ELs.

Finally, at several schools implementing the Sheltered ESL program, including but not limited to Greene, Roger Williams, West, Central, and Mount Pleasant, we observed lessons that did not incorporate ESL, even though District guidance requires Sheltered ESL programs to provide a “strong [ESL] component in every lesson.” *See* EL Handbook at 29.

Without adequate ESL, ELs cannot attain English proficiency and “parity of participation in the standard instructional program within a reasonable length of time after they enter the school system.” *See Castañeda*, 648 F.2d at 1011. As a result, many of these students, some of whom are already designated as long-term ELs, will languish in the District’s EL programs. In fact, the District has at least 756 long-term ELs who have not yet attained English proficiency,

notwithstanding the fact that they have been in its EL programs anywhere from 6 to 13 years. *See* Dist. Response #1, provided Jan. 27, 2017. The District must ensure that its EL students are receiving ESL in a manner that is both appropriate and effective at overcoming their language barriers within a reasonable length of time. *See Castañeda*, 648 F.2d at 1011.

6. The District Fails to Adequately Staff its EL Programs with Qualified Teachers

The District's failure to provide ELs with the ESL they need is closely connected to its failure to staff its EL programs with enough ESL-certified teachers. Under the EEOA, districts must hire and train a sufficient number of qualified staff to implement their chosen EL programs. *Castañeda*, 648 F.2d at 1010, 1012-13. As *Castañeda* recognizes, teachers should at a minimum meet the state requirements for teaching ELs, though they may need even more training to become qualified to deliver EL services. *See id.* at 1012-13. Even Rhode Island's regulations require ESL instruction to be taught by ESL-certified or bilingual-certified teachers. *See* R.I. EL Regs at L-4-2(11).

The number of ESL-certified teachers in the District is not sufficient to serve its large EL population. When we asked school personnel what resources they wish they had to better serve ELs, every principal said more ESL-certified staff. For example, we learned that the District assigned 200 newcomer ELs mid-year to Central, but did not assign any additional ESL teachers to the school. Consequently, the school asked its ESL-certified teachers to volunteer to teach more classes during their free periods. ESL teachers at other schools also shouldered unmanageable caseloads, such as a teacher at Roger Williams who was providing ESL to 181 ELs. In addition, District data showed that 15% (33 of 215) of the teachers hired to address the needs of ELs were not yet qualified because they were in the process of obtaining their emergency certification. Seven of them had let their emergency certifications lapse. *See* Dist. Responses W-X, provided June 6, 2017.

Most of the schools we visited had vacancies for ESL-certified teachers. Carl Lauro had eight vacancies for ESL-certified teachers, and other schools had long-term substitutes teaching ESL (e.g., Messer Street's Newcomer Program). At nearly every school, the Human Resources Director and teachers and administrators raised concerns about the cost (\$7,000 - \$10,000) and time commitment (two or more years of night and weekend classes) that deter teachers from seeking ESL certification. Meanwhile, compensation for having an ESL certification is nominal, at approximately \$500 annually. To its credit, the District is working on new initiatives to increase the number of ESL-certified teachers. However, the current complement remains inadequate to implement the District's many ESL programs. *See Castañeda*, 648 F.2d at 1010, 1012-13; *Keyes*, 576 F. Supp. at 1516-17.

The District also fails to staff its Sheltered ESL program with enough teachers who are qualified to shelter content for ELs. *See Castaneda*, 648 F.2d at 1012-13; *Keyes*, 576 F. Supp. at 1516-17. Even state regulations require that teachers of sheltered content instruction "must (1) meet appropriate State-certification requirements, (2) be highly qualified in their content area as defined by [the State], and (3) participate in specialized training in ESL methods and techniques." *Id.* at L-4-2(21). The District represents that its Sheltered ESL program uses the specialized techniques in the Sheltered Instruction Observation Protocol ("SIOP") model. *See* EL Handbook at 29. This model "is both an observation instrument and a sheltered instruction

model for teachers to plan and deliver lessons” that give ELs “the opportunity to learn academic English through high quality, scaffolded instruction in all core content areas.” *Id.* We learned from interviews and classroom observations that the District had trained few teachers on the SIOP model or other sheltering strategies.⁷ For example, at Central, no teachers had SIOP training and only one teacher has received training on sheltered instruction since 2014. Most teachers that we observed did not implement the SIOP model, and none did so with fidelity.⁸

The District’s failure to require SIOP (or other training on how to provide sheltered instruction) for the teachers assigned to the Sheltered ESL program and its failure to evaluate if its sheltered teachers are adequately trained constitute failures to take appropriate action under the EEOA. *See Keyes*, 576 F. Supp. at 1514 (finding district violated the EEOA by not requiring training for its EL teachers and not having a formal procedure for evaluating their teaching skills).

7. The District Unnecessarily Segregates Some ELs in its Sheltered ESL Program

Though the EEOA allows a district to group students on the basis of English proficiency for language remediation purposes, a district may not segregate ELs beyond what its EL programs necessitate. *See Castañeda*, 648 F.2d at 998, n.4 (“We assume that the segregation resulting from a language remediation program would be minimized to the greatest extent possible and that the programs would have as a goal the integration of the [EL students] into the English language classrooms as soon as possible and thus that these programs would not result in segregation that would permeate all areas of the curriculum or all grade levels.”). However, at certain schools offering the Sheltered ESL program, the District unnecessarily segregates ELs with higher proficiency scores beyond what this program or their English proficiency levels require. At several schools that we visited (*e.g.*, Greene, Lauro, Williams, West, and Broad Street), we found that ELs across English proficiency levels in one or more grades (or cohorts within grades) attended all classes with only ELs, except for lunch, recess, and electives. In addition, a parent at Bishop complained to the District that ELs were not being taught along with non-ELs. *See* Dist. Response #13. The District has not demonstrated why segregating ELs in the Sheltered ESL program all day except for lunch, recess, and an elective is necessary when sheltered instruction may be provided in an integrated class of ELs and non-ELs, as recognized by the District’s own guidance.⁹ This degree of segregation is especially unwarranted for ELs matriculating from more integrated EL programs where they had been progressing.

⁷ Teachers at only five schools received *any* SIOP training between 2014 and 2016, and only three of those schools had more than one teacher attend. E Cubed trained most of its staff, including special education teachers, but at most they received five hours of training, which is not enough to prepare a teacher to shelter content effectively. *See Castañeda*, 648 F.2d at 1013; *Keyes*, 576 F. Supp. at 1517.

⁸ For example, a core component of SIOP is to have both content and language objectives and provide support for those objectives during the lesson. *See* EL Handbook at 42, 45. However, many classrooms that we observed did not have a language objective written on the board, nor were the objectives clear from the lesson delivery.

⁹ The District’s guidance to schools offering Sheltered ESL and the Consultation Model recommends placing ELs with literacy scores above 2.5 into Integrated or general education classes with non-ELs. *See* Dist. Response #8, provided May 9, 2017.

8. The District Lacks Sufficient Materials to Implement Some of Its EL Programs

As *Castañeda* makes clear, a school district must provide its ELs with adequate materials to implement its chosen EL program. *See Castañeda* 648 F.2d at 1009-10; *see also Lau v. Nichols*, 414 U.S. 563, 566 (1974). The District, however, lacks sufficient materials at some schools to implement its EL programs. For example, at Pleasant View, we learned that Imagine Learning was available only for ELs scoring under 3 on the ACCESS even though ELs with higher scores in the Consultation Model also could benefit from this resource. Providence Career & Technical Academy personnel explained that the school lacks supplemental ESL materials for technical courses, such as plumbing and HVAC. At Central, school personnel tasked with providing EL services to the large number of newcomer ELs lacked a pacing guide with appropriate resources designed specifically for newcomers. One teacher at Central reported that teachers have no budget to purchase supplies for their classrooms, and noted that bilingual dictionaries would be incredibly helpful to ELs. Bilingual dictionaries are a standard testing and instructional accommodation that should be available to all ELs who qualify for this accommodation.

9. The District Fails To Adequately Train Principals to Implement EL Programs

Administrators at the district and school levels must monitor implementation of EL programs and ensure that teachers are adequately trained to implement these programs. *See Castañeda*, 648 F.2d at 1012-14 (explaining that the lack of qualified, well-trained teachers “seriously undermine[d] the promise of the district’s bilingual education program” and that the district in question could not be “deemed to be taking ‘appropriate action’ to overcome the language disabilities of its students” until it obtained qualified teachers for its program). For an EL program to be effective, it is important that not only the teachers are qualified to deliver instruction to ELs, but that those tasked with evaluating the teachers, such as principals, are also qualified to evaluate the instruction of ELs in the classroom. *See id.* (requiring the state and the district “to devise an improved in-service training program and an adequate testing or evaluation procedure to assess the qualifications of teachers completing this program”); *see also Rios v. Read*, 480 F. Supp. 14, 18, 23-24 (E.D.N.Y. 1978) (finding district’s bilingual program inadequate under the EEOA, including district’s use of principals “to evaluate the performance of bilingual teachers [who] are unfamiliar with bilingual teaching methods and do not understand Spanish”).

The District does not require its administrators to receive training on ESL, the SIOP model or other sheltering strategies, or any specific training about evaluating teachers of ELs. With the exception of a few hours during “nuts & bolts” orientation, principals do not receive training from the District on how to observe, give feedback on, or evaluate instruction in a sheltered or collaborative setting. The District also has not developed any tools to assist principals in evaluating EL instruction in their schools; principals rely on the standard teacher evaluation form when conducting classroom observations. Consequently, with the exception of schools like George West, Pleasant View, and Providence Career & Technical Academy, where the principals were former EL teachers and can rely on their personal training and experience, many of the District’s principals, like those in *Rios*, are ill-equipped to evaluate the effectiveness of their EL programs or provide support to their EL teachers. *See Rios*, 480 F. Supp. at 23-24.

10. The District's Enrollment Procedures Do Not Timely Identify All ELs

A school district must have procedures in place to accurately and timely identify students who have a primary or home language other than English and to determine if they are ELs through a valid and reliable English proficiency assessment in all four language domains. *See Keyes*, 576 F. Supp. at 1513-14, 1518 (absence of a formal valid testing process to identify EL students violated the EEOA); *Rios*, 480 F. Supp. at 23-24 (“The school district has the [EEOA] obligation of identifying [EL] children . . . by objective validated tests conducted by competent personnel”); *Cintron v. Brentwood*, 455 F. Supp. 57, 64 (E.D.N.Y. 1978) (requiring “validated” tests of English proficiency). While it is important to ask parents some questions to determine if their child might be an EL, the EEOA case law recognizes that “[i]t is common for parents to overstate the language abilities of their children” and thus necessary to use a valid testing process to identify ELs. *See Keyes*, 576 F. Supp. at 1514.

The District's enrollment procedures fail to ensure that all ELs are reliably and timely identified. The District asks all parents to complete a six-question home language survey and then to answer a different five-question online survey to identify students whose primary or home language is a language other than English. Although the questions on the home language surveys are sufficient for determining which students may be ELs who need their English proficiency tested, the District requires placement officers to conduct a family interview and to use the results of the interview to inform determinations about whether to test the student's English proficiency. The EL Director acknowledged that some of the family interview questions do not elicit information relevant to determining whether a student is an EL.

Instead of administering a valid English proficiency test to students whose home language surveys responses indicate that they may be ELs, the District is *not* testing some of these students based on parental responses to family interview questions that are not relevant to whether a student is an EL. This practice, coupled with the District's failure to give its staff adequate guidance about which parental responses to the relevant questions should lead to testing, results in unreliable EL identification procedures. *See, e.g., Cintron*, 455 F. Supp. at 64 (finding EL identification procedures “deficient” because they were “not clearly indicated” and requiring “validated tests” to assess English proficiency). For example, one placement officer told us that “[i]f the parent says mostly English [in response to follow-up questions], then we don't test.” But the District should not rely on assertions from parents about their child's language abilities in a follow-up conversation as a substitute for a valid and reliable English proficiency test. *See Keyes*, 576 F. Supp. at 1514. Another placement officer said, “If they're born here, we usually don't test. That came from [the EL Director].” The placement officers also told us that the EL Director informed the Enrollment Center that it was “over testing and setting up too many appointments.” Such statements are troubling because most ELs were born in the United States, and only valid and reliable testing can accurately identify all ELs. *See id.; Rios*, 480 F. Supp. at 23.

Also troubling are the District's discrepant reports about the number of students whom the Enrollment Center did not test even though their home language surveys indicated a primary or home language other than English. The District's initial 2016-17 report to us showed that it had not tested more than 1,000 such students. Later, the District reduced that number to 69 students, asserting that many had already been tested in another state. Of these 69 students, 41

had home language surveys identifying Spanish as both the language the parent uses most often with the child and the language the child first learned to speak. In its most recent report, the District reported only 11 students whose lack of testing it considered unjustified, but we have concerns about the way the District calculated this number. Whatever the actual number is, it is clear that the District's unreliable enrollment procedures discussed above lead to failures to test the English proficiency of students who are likely to be ELs based on their home language surveys, and therefore a failure to timely identify all ELs. *See Rios*, 480 F. Supp. at 23-24; *Cintron*, 455 F. Supp. at 64.

11. The District Does Not Effectively Communicate with Many LEP Parents

A district must take appropriate action to ensure meaningful communication with LEP parents about its programs and the procedures for accessing those programs so that their children are not denied an equal opportunity to participate. *See* 20 U.S.C. § 1703(f). Ensuring equal educational opportunities for ELs requires adequately notifying their parents of district and school activities, and effectively communicating in district and school meetings, such as IEP meetings, through interpreters and translated documents. *See T.R. v. Sch. Dist. of Philadelphia*, 223 F. Supp. 3d 321, 333-35 (E.D. Pa. 2016) (denying school district's motion to dismiss plaintiffs' EEOA, Title VI, and other claims in a case seeking district translation of IEPs and other special education documents and adequate interpretation at IEP meetings for LEP parents).

The District fails to communicate effectively with LEP parents at the Enrollment Center. The home language survey and the form to waive EL services are available only in English and Spanish, which excludes the parents of at least 561 students who speak other languages. In addition, the forms about EL program options are inaccurate and not translated. While the District need not translate these forms into every language, it should translate them into languages the District has identified as the next most common languages, such as Arabic, Swahili, Creole, Portuguese, and Khmer, and have interpreters available for less common languages. The District, however, lacks a procedure for the Enrollment Center staff to obtain qualified interpreters for parents who speak languages other than those spoken by the staff. The Enrollment Center staff explained that they often communicate with LEP parents using web-based, automated translation services, like Google Translate, or rely upon family members to interpret when communicating essential information about the enrollment process and the programs available to ELs in the District. In the event that an LEP parent arrives at the Enrollment Center without a family member or other representative who can interpret, and the LEP parent speaks a language other than those spoken by the staff, the placement officers explained that they request that the family member return with an interpreter.

Communications with LEP parents at the school level are also inadequate. Interviews with administrators and teachers revealed that schools often fail to use the LEP parent information gathered on the home language survey or the District's contract for interpretation and translation services. Some administrators reported they could use the District translation service if necessary, but most reported that they relied on untrained office staff or English-speaking friends or family members when communicating with LEP parents. School personnel also reported using students, friends, family members, and Google translate to communicate about school programs and activities with LEP parents and EL students.

Many of the schools we visited had bilingual office staff, but neither they, nor the District, had trained such staff on the practice of translating and interpreting. Few schools we visited reported requesting an interpreter for any reason other than an IEP meeting. No school personnel had ever known an IEP to be translated from English into another language. *See T.R.*, 223 F. Supp. 3d at 333-35.

Collectively, the District's failures to communicate effectively with LEP parents deny ELs equal opportunities to participate in its instructional programs, whether it be an EL program, its special education program, or an Advanced Academic program. The District must ensure that LEP parents have timely and meaningful access to information about its educational programs so that LEP parents are empowered to make informed educational decisions for their children and are not placed at a disadvantage relative to parents and students who are native English speakers.

12. ELs Lack Equal Opportunities to Participate in Specialized Programs

Taking "appropriate action" to provide ELs with "an equal educational opportunity" to participate in the District's "instructional programs" includes not only the core curriculum, but also its specialized programs like gifted, vocational, and special education programs. *See* 20 U.S.C. § 1703(f). Though the District does not have a policy that categorically excludes ELs from these programs, we are concerned that the District's practices are deterring ELs from participating or remaining in these specialized programs or delaying their access to them.

ELs clearly face barriers to participation in the District's Advanced Academic program at Greene, Williams, and Classical High School and its career and technical education program at Providence Career & Technical Academy. Though the District had approximately 1,083 ELs in middle school in the 2016-17 school year, *only one* enrolled in a middle school Advanced Academic program, and that EL at Greene was an Eligible but Not Enrolled student whose parents apparently waived EL services. *See* Dist. Response G, provided May 24, 2017. The ELs enrolled in the Sheltered ESL Program at Greene—which is the only EL program the school offers—take all core content courses with other ELs, and therefore cannot enroll in the Advanced Academics program. Thus, the District's implementation of the Sheltered ESL program at Greene effectively requires an EL who wishes to enroll in the Advanced Academics program to waive EL services. Being a current EL is not the only barrier, however, because very few former ELs participated in the District's Advanced Academic program.¹⁰ For example, only one of 1,774 high school ELs (0.06%) in the District and 11 of 264 former ELs in high school (4%) were enrolled in this program at Classical High School, as compared to 1,120 of the 4,970 (22.5%) never ELs in high school. *Id.* The 2016-17 data further show that approximately 99% (1,120) of the 1,132 students at Classical were never-ELs and only 0.01% were current ELs (1) and 1% (11) were former ELs.

We also have concerns about EL students' access to the Providence Career & Technical Academy. While on site, we learned that the school has a set number of seats for EL students in each entering ninth-grade class. We determined that the percentage of these seats (11%) is not commensurate with the percentage of total ELs in grade nine (approximately 36%). We also

¹⁰ In the 2016-17 school year, only 25 of the 649 former ELs in the District in grades six through eight were enrolled in this program at Greene and Williams. *Id.*

noticed that the number of ELs in this school declines across grades nine to twelve and is less than half of the entering number of ninth-grade students by senior year. These numbers suggest that some ELs transfer or otherwise withdraw after ninth grade, losing an important opportunity for vocational training. Further, we are concerned that EL students may be withdrawing due to inadequate language assistance. There are only two teachers of ELs, and one is in the first year of her emergency certification. The District must ensure that its policies and practices are not impeding ELs from participating in this Academy or other desirable programs based on their EL status. *See* 20 U.S.C. § 1703(f).

In addition, interviews at five schools suggested delays in evaluating ELs suspected of having disabilities based on their language barriers. School personnel informed us that it can take a significant amount of time for ELs to be evaluated for and receive special education through the District's RTI process. One teacher at the Providence Career & Technical Academy shared that teachers are often met with resistance when they seek to refer an EL for a special education evaluation because the evaluation process can take years. The District must ensure that there are no formal or informal policies that require ELs to wait longer than non-ELs to be evaluated for a disability. When a district delays an EL's opportunity to participate in its special education program because the student is an EL, the district fails to take the appropriate action required by the EEOA. Insisting that ELs suspected of having a disability wait for a specified time period or until they achieve a certain level of English proficiency before they can be evaluated for a disability unfairly delays their opportunity to participate in the district's special education program. Further, by delaying the special education evaluation of an EL because the child is an EL, the district makes it difficult, if not impossible, for that child to overcome his or her language barriers and participate equally in the district's instructional programs.

13. The District's Exit Criteria Are Inappropriate and Its Monitoring of Exited Students is Inadequate

A school district must monitor the progress of its EL students in acquiring English proficiency and participating in the district's instructional programs. This monitoring must include validly and reliably testing their English proficiency and performance in the core content subjects. *See Castañeda*, 648 F.2d at 1014 ("Valid testing of student's progress in these areas is, we believe, essential to measure the adequacy of a language remediation program."). When this testing shows that the EL student has achieved proficiency in English, the district should exit the student from its EL program and identify the student as a former EL, unless other criteria for exit indicate that the student needs additional EL services.¹¹ To ensure that former ELs were not prematurely exited from EL programs and can participate in instructional programs comparable to their never-EL peers, the district must monitor the academic progress of its former ELs and re-offer them EL services if the students are struggling based on persistent language barriers. *See* 20 U.S.C. § 1703(f); *Castañeda*, 648 F.2d at 1014 ("The progress of limited English speaking

¹¹ "Any ability grouping or tracking system employed by the school system to deal with the special language skill needs of national origin-minority group children must be designed to meet such language skill needs as soon as possible and must not operate as an educational dead-end or permanent track." *Lau*, 414 U.S. at 568 (quoting May 25, 1970 Mem. of Dep't of Health, Education, & Welfare (now replaced by the Dep't of Education), 35 Fed. Reg. 11595 (July 18, 1970), re: Title VI obligation not to discriminate based on national origin). In other words, districts should not keep ELs in EL programs longer than necessary and should exit them when their language barriers have been overcome and no longer deny their participation in instructional programs.

students in these other areas of the curriculum must be measured by means of a standardized test . . . because no other device is adequate to determine their progress vis-à-vis that of their English speaking counterparts.”). As Section 1703(f) and *Castañeda* make clear, the ultimate question is whether ELs who participated in the district’s EL program have overcome their language barriers (i.e., became former ELs) and are able to participate equally in the district’s instructional programs.

The District inappropriately precludes ELs from exiting its EL programs until they reach the third grade. *See* EL Handbook at 16 (“students in grades 1 and 2 will not be exited from EL program”). Rhode Island’s exit criteria do not include this limitation. The District did not proffer any explanation for this requirement, and at least one elementary principal reported that she had several ELs who could have exited but for this requirement. By requiring ELs to remain in an EL program when they have demonstrated proficiency on a valid and reliable test of English proficiency, the District is denying these students an equal opportunity to participate in the standard instructional program and unnecessarily segregating them in EL-only classes.

As for the students who have exited the EL program, the District is not meaningfully evaluating these former ELs to ensure they are able to participate comparably to their never-EL peers. *See Castañeda*, 648 F.2d at 1011, 1014. According to our interviews, teachers are often not aware of the former ELs who need periodic monitoring to ensure that they no longer need EL services. Though teachers of a former EL are most likely to know if the former EL is struggling due to a persistent language barrier, their input is often not meaningfully gathered from the guidance counselors and other school personnel who are responsible for filling out the monitoring forms for former ELs. Interviewed staff also could not recall an instance of a former EL reentering EL services because of a persistent language barrier. Without meaningful monitoring of the individual performance of former ELs, the District has no way of knowing if they have overcome their language barriers or need additional EL services.

14. The District Has Not Adequately Evaluated Its EL Programs for Effectiveness

The District has not adequately evaluated the effectiveness of its EL programs over time to ensure that they enable EL students to acquire English proficiency and “to attain parity of participation in the standard instructional program” within a reasonable period of time. *Castaneda*, 648 F.2d at 1011. To accurately assess the effectiveness of an EL program, a district must evaluate data that provides a comprehensive and reliable comparison of how ELs, former ELs, and never-ELs are performing in the district’s instructional programs longitudinally. *See id.* at 1011, 1014 (“Valid testing of students’ progress . . . is, we believe, essential to measure the adequacy of a language remediation program.”).

Based on our review of the data produced by the District and our interviews of District staff, the District has not properly evaluated its nine EL programs. First, the District has not disaggregated any of its student performance data by EL program. *See Issa*, 847 F.3d at 137-38 (discussing district’s failure to evaluate the effectiveness of the EL program). Second, the District is not comparing the academic performance of ELs, former ELs, and never-EL students. *See Castañeda*, 648 F.2d at 1014 (“The progress of limited English speaking students in these other areas of the curriculum must be measured by means of a standardized test . . . because no other device is adequate to determine their progress vis-à-vis that of their English speaking

counterparts.”). Third, the District is not analyzing student performance data longitudinally (i.e., tracking cohorts of ELs who remain in the EL program over time to assess its effectiveness). *See id.* at 1011; *Horne v. Flores*, 557 U.S. 433, 464 (“[A]s the Court of Appeals recognized, the absence of longitudinal data in the record precludes useful comparisons” when evaluating the effectiveness of an EL program.”); *U.S. v. Texas*, 601 F.3d 354, 371 (5th Cir. 2010) (same). For example, even though the Superintendent acknowledged, and our review of the available data confirmed, that middle school is where ELs experience considerable difficulty with attaining proficiency, the District had not done a longitudinal analysis of middle school ELs to determine how best to improve their performance. The District should closely evaluate this and the EL programs at schools that retained a large percentage of ELs. For example, the Juanita Sanchez Educational Complex retained 28% of ELs in the 2015-16 school year, which is nearly twice the number of never-EL students retained. *See* Request #14_FINAL_RetentionELLStatus. In ninth grade alone, JSEC retained 43% of ELs. *See id.* Similarly, Central retained 21% of ELs in the 2015-16 school year compared to only 10% of the never-ELs. *See id.*

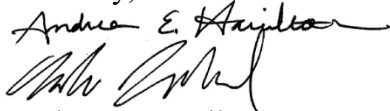
RECOMMENDED REMEDIAL MEASURES

The District should promptly implement minimum remedial measures—set forth here and in more detail in the enclosed proposed settlement agreement—to remedy the conditions discussed above and protect the EEOA rights of EL students in the District. In broad terms, the District must ensure that all ELs are reliably and timely identified; provided with adequate ESL, including an ESL-certified teacher; and receive meaningful access to their core curriculum from teachers who are adequately trained to teach content to ELs. The District also must provide appropriate materials for its EL programs, train principals to implement its EL programs, increase ELs’ access to its specialized programs, and ensure meaningful communications with LEP parents through qualified interpreters and translated materials. Finally, the District must use appropriate exit criteria, adequately monitor former ELs, and effectively evaluate its EL programs over time.

CONCLUSION

We look forward to speaking with you and District administrators about this letter and the enclosed proposed settlement agreement. We hope to work collaboratively to help the District’s EL students succeed.

Sincerely,



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