

Settlement Agreement

between

The United States of America

and

The Bound Brook, N.J. Board of Education

SETTLEMENT AGREEMENT

DEFINITIONS

1. “Bound Brook School District” and “the District” refer to the Bound Brook, N.J. Board of Education and the schools that it operates.
2. “ELLs” refers to students who are English Language Learners, Limited English Proficient, or Non-English Proficient and thus require assistance to overcome language barriers that impede their equal participation in the District’s instructional programs.
3. “ESL” refers to English as a Second Language.
4. “POE” refers to Port of Entry.
5. “Language services” refers to ESL, bilingual, or POE instruction for ELLs.

PURPOSE

6. The Bound Brook School District, by its undersigned counsel, agrees to the terms of this Settlement Agreement and to comply fully with its provisions in order to address and resolve the issues raised by the United States Department of Justice, Civil Rights Division (hereafter the “United States”) regarding the District’s federal legal obligations under the Equal Educational Opportunities Act of 1974, 20 U.S.C. § 1701 *et seq.* (hereafter “EEOA”).

7. In consideration for the commitments made herein by the Bound Brook School District, the United States agrees not to initiate judicial proceedings to enforce the requirements of the EEOA regarding the District’s education of ELLs, including the District’s efforts to take appropriate steps to overcome language barriers that impede equal participation by ELLs in the District’s instructional programs.

8. This Settlement Agreement shall become effective on the date of its entry and

shall remain in effect for three full school years following that date. The date on which counsel for the United States signs the Settlement Agreement shall be the date that shall be considered to be the entry date of this Settlement Agreement. This Settlement Agreement is undertaken as a means of alternative dispute resolution to avoid litigation and for the purposes of judicial and governmental economy. The Settlement Agreement shall not be construed as an admission of liability by the District to any violations of the EEOA.

GENERAL REQUIREMENT

9. As required by the EEOA, the Bound Brook School District shall take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs. *See* 20 U.S.C. § 1703(f).

SPECIFIC REQUIREMENTS

Registration and Identification of ELLs

10. At all locations in the District where ELLs may register to attend one of the District's schools, the District shall ensure that all intake personnel, including but not limited to secretaries and guidance counselors, shall require the parents/guardians of enrolling students to complete the attached registration form, including the questions regarding languages spoken at home, by the parent/guardian, and by the student, and the attached Native Language and Special Education Survey ("Survey"). All students whose parents/guardians have indicated on the registration form or during their interaction with the intake personnel that a language other than English is spoken at home or by the student shall be assessed with the MAC II test to determine eligibility for language services and/or the student's appropriate ESL level. If Spanish is the native language spoken at home or by the student, the student shall be placed in a grade

appropriate bilingual class if available pending assessment with the MAC II test. If a bilingual class is not available or the native language is other than Spanish, the student shall be placed in a grade appropriate ESL class, POE class, or regular education class (*i.e.*, classes that are not specifically a part of the ESL or bilingual programs) pending assessment with the MAC II test.

11. Once a student is assigned to a bilingual, ESL, POE, or regular education class, the District shall promptly provide written notice to the student's bilingual teacher, ESL teacher, POE teacher, home room teacher at the elementary schools, or English teacher at the middle and high schools that the student must be assessed with the MAC II within three (3) weeks of the student's first day in school. The District shall include the MAC II test and/or the test score in the student's records and shall assign the student to a bilingual, ESL, POE, or regular education class that is appropriate for the student's MAC II score, native language, age, and educational background. At the middle and high schools, students who are not literate in their native language or English shall be assigned to POE classes.

12. The attached registration form and Survey shall be used at all registration locations in the District and shall be provided in English and Spanish. Any flyers regarding the deadlines, locations, and materials required for student registration as well as the ESL Entrance Letter and the Right of Refusal Letter also shall be provided in English and Spanish. The District shall have the question "Is a language other than English spoken at home or by the student" translated into other languages commonly spoken by parents/guardians and shall have the written translations available at all registration locations to assist with registration. The District shall provide the ESL Entrance Letter and the Right of Refusal Letter in the native language of the parent/guardian if the letter is available on the New Jersey Department of

Education's website.

13. At each school facility, the District shall compile a list of non-teaching and teaching personnel by language ability who are available to provide translation assistance when necessary to serve ELLs and/or their parents, relatives, guardians or guests. To the extent practicable, the District shall ensure that the non-teaching personnel on each school's list are used to provide these translation services, and that ESL and/or bilingual teachers are not pulled away from their teaching and/or class preparation responsibilities to serve as translators.

14. The District shall ensure that all personnel involved in the student registration process are trained in the procedures for: (a) completing the registration form, including the questions regarding languages spoken at home or by the student; (b) completing the Survey and referring appropriate students to special education services; (c) providing written notification to the designated teacher regarding a student's need to be assessed with the MAC II; and (d) using the District's translated forms or obtaining verbal language translation by designated personnel.

Instruction of ELLs

15. Consistent with the District Policy No. 2423 and the applicable laws and regulations of New Jersey, the District's ESL curriculum shall address the New Jersey Core Curriculum Content Standards, shall be cross referenced to the District's bilingual and content area curricula to ensure that ESL instruction is correlated to all the content areas being taught, and shall reflect the New Jersey ESL Standards.

16. Consistent with the District's policy and the applicable laws and regulations of New Jersey, the District shall provide forty-five (45) minutes of ESL instruction per day to all ELLs in grades 3 through 6 and shall provide at least one hundred and fifty (150) minutes of

ESL instruction to all ELLs in grades K through 2 and grades 7 through 12 during each week of each school year. The District shall provide equitable amounts of ESL instruction to all ELLs but may vary the amount of ESL instruction depending on the level of the ELL's proficiency in English (e.g., beginner ELLs may receive more ESL instruction than advanced ELLs provided all ELLs receive a minimum of 150 minutes per week).

17. Consistent with the applicable regulations and laws of New Jersey, the District shall provide bilingual services to eligible ELLs unless a valid waiver has been obtained from the New Jersey State Department of Education. In the 2003-04 school year, the District shall provide self-contained bilingual classes for grades K, 1, and 2 and a minimum of forty-five (45) minutes of bilingual pull-out services each day for grades 3 through 6. In future years, the District shall provide a minimum of forty-five (45) minutes of bilingual services each day to eligible ELLs, whether the bilingual services be in a pull-out, push-in, or self-contained class format. To the extent the District provides multi-grade bilingual classes, it shall ensure that ELLs in such classes receive the complete grade appropriate curriculum and shall evaluate such ELLs' acquisition of the grade appropriate curriculum at least twice during the school year to ensure that ELLs in multi-grade bilingual classes receive an equal opportunity to learn their grade's curriculum.

18. The District shall continue to operate a Port of Entry ("POE") program that shall be available to middle and high school ELLs who require a period of transition before entering the ESL classes offered at the middle and high schools. The POE program shall consist of English, Reading, Writing, Math, and Academic Enhancement Math classes for a full school year and a semester each of Science and Social Studies. The District shall evaluate POE

students mid-year and at the end of the school year to see if they are prepared to move into ESL classes. If they are prepared, the District shall assign the student to the appropriate level ESL classes.

19. By January 15, 2004, the District shall submit for review to the United States proposed ESL curricula, including but not limited to curricula for different levels of proficiency and different grade levels. The proposed ESL curricula also must include the curricula for the POE classes by subject and grade level, the ESL Basic Skills classes, and any other ESL subject. The United States shall have thirty (30) days to raise any questions or concerns regarding the proposed curricula and the District shall respond to these concerns within thirty (30) days. If the United States does not raise any questions or concerns within the thirty-day period, the ESL curricula shall become final. If the United States finds that the District has adequately addressed any questions or concerns raised, the United States shall promptly notify the District in writing and the ESL curricula shall become final. If the District fails to address the United States' concerns, the United States reserves the right to litigate the matter. Once final, the ESL curricula shall be implemented within sixty (60) days and by no later than the start of the 2004-05 school year. Proposed changes to the final curricula should be submitted to the United States in writing, and the deadlines for raising objections and responding thereto provided in this paragraph shall apply to the United States and the District.

20. Once the ESL curricula is final, the District shall provide training for all ESL, POE, and bilingual teachers on how to implement the District's ESL curricula within sixty (60) days and by no later than the start of the 2004-05 school year. The training shall include, but is not limited to, guidance to teachers on how to implement the District's standards-based curriculum

into their classroom instruction. The District shall train all new ESL, bilingual, and POE teachers on how to implement the ESL curricula within thirty (30) days of their first day of teaching and whenever possible before the start of the school year. After receiving the initial training, all ESL, bilingual, and POE teachers shall receive refresher training at least once a year.

21. By November 15 of each year of this Agreement, the District shall submit its Professional Development Plan for the United States' review. Such plans shall ensure that all teachers of regular education classes receive training at least twice each school year regarding working with current and recently exited ELLs and coordinating with ESL and bilingual teachers to identify and address any language barriers that may hinder current and/or recently exited ELLs from participating in general education classes.

22. The District shall increase opportunities for horizontal and vertical articulation among ESL, bilingual, and general education teachers within and across grade levels. Toward that end, the District shall ensure meaningful opportunities for horizontal and vertical articulation among all of its teachers at grade level, department level, and faculty level meetings, as well as at staff development sessions. At the middle and high schools, a bilingual or ESL teacher shall be assigned to each of the following disciplines to ensure articulation among bilingual teachers, ESL teachers, and teachers of these disciplines: language arts, social studies, math, science, and world languages. At the elementary schools, a bilingual or ESL teacher shall be assigned to a specific grade for the grade level meetings and shall be responsible for ensuring articulation among bilingual teachers, ESL teachers, and general education teachers for that grade level.

23. The District shall ensure that ELLs are integrated, to the extent practicable, with

general education students in school instruction, functions, co-curricular activities, and extracurricular activities. Consistent with the applicable laws and regulations of New Jersey, the District shall integrate all grade K through 6 ELLs in special classes, including but not limited to art, music, physical education, and recess.

Resource Allocation

24. The District shall ensure that the media center and library in each school facility are fully accessible to ELLs. The District's efforts in this regard shall include, but are not limited to providing sufficient orientation and training to ELLs to enable them to use the written, audio, visual and computerized resources in the media center and library; and ensuring that each library has language-ability appropriate literary materials in English, as well as age-appropriate literary materials in the native language(s) of the ELLs served at the school facility, taking into account the number of ELLs served at each such facility.

25. To the extent practicable and consistent with educationally sound practices, the District shall ensure that the student/teacher and staff/teacher ratios in classrooms serving ELLs are not higher than the student/teacher and staff/teacher ratios in regular education classes in the same school that serve the same grade level and teach similar subject matter.

Access to Programs

26. The District acknowledges that ELLs are entitled to services that shall enable them to participate meaningfully in all of the District's educational programs, services and activities for which they are eligible.

Basic Skills

27. Each school year, the District shall simultaneously notify all teachers, including

all ESL, bilingual, and POE teachers, that they may refer students, including ELLs, for basic skills instruction. The District shall provide basic skills services to all ELLs who are eligible for such services, and eligibility criteria shall permit consideration of all ELLs regardless of whether they have taken a particular test.

28. To the extent practicable, the District shall make basic skills services accessible to ELLs by having: (a) a teacher credentialed in both basic skills and bilingual or ESL instruction provide services; (b) a teacher credentialed in basic skills who is also fluent in the ELL's native language provide services; or (c) a bilingual or ESL teacher or teacher assistant assist the basic skills teacher in providing services.

Special Education

29. The District shall provide special education services and language services to all students who are eligible for both such services. The District shall not deny language services to special education students who qualify for language services and shall not deny special education services to students who are ELLs and qualify for special education services.

30. Consistent with applicable federal law and regulations, all Individual Education Plans (IEPs) of ELLs shall consider the language needs of the ELL as such needs relate to the ELL's IEP, and the District shall record in the ELL's IEP the type of language and special education services provided to the ELL, including the nature and duration of such services (e.g., 45 minutes of ESL and 45 minutes of resource instruction per day). The IEP shall include: the student's current MAC II test score; the languages in which special education assessments were conducted; modifications, if any, of standard assessment procedures; the qualifications of the individuals completing the assessments; the objective test results; the impact of language on the

interpretation of the data, including a determination by the IEP team that the student's level of English proficiency is not determinative of the decision to administer special education services.

31. When providing special education services to ELLs, the District shall make such services accessible to ELLs by using one of the following models pursuant to the terms below and shall record the model used in the ELL's IEP:

1. A teacher with credentials in both bilingual and special education provides services.
2. An English monolingual special education teacher and a bilingual teacher team teach to provide services either in the bilingual regular education class or the special education class.
3. A teacher with credentials in both special education and ESL provides services. This model is more appropriate for ELLs who have higher levels of language proficiency.
4. An English monolingual special education teacher and an ESL teacher team teach to provide services either in the special education class or in the class where ESL is provided. This model is more appropriate for ELLs who have the highest level of language proficiency.
5. An English monolingual special education teacher provides services with the assistance of a bilingual teacher assistant. This model should be used only when models 1 through 4 are not possible.
6. An English monolingual special education teacher provides resource, not self-contained, special education services in consultation with a bilingual or ESL teacher, who recommends instructional strategies and accommodations to facilitate English language acquisition. This model should be used only when models 1 through 5 are not possible.

32. The District shall continue its efforts to recruit and hire special education teachers and teacher assistants who have bilingual or ESL credentials or at least fluency in one or more of

the languages of its ELLs. The District's notices regarding its special education vacancies shall express an interest in candidates with bilingual or ESL credentials and foreign language fluency.

Enrichment

33. To the extent an enrichment teacher visits general education classes at a particular grade level, the enrichment teacher also shall visit all classes at that grade level containing ELLs whether the ELLs are in a bilingual, ESL, or general education class.

34. The District shall notify all ESL, bilingual, POE, and general education teachers as well as all parents'/guardians' of ELLs in writing that ELLs may be referred for enrichment services, and shall ensure that eligibility criteria permit consideration of all ELLs regardless of whether they have taken a particular test. If an ELL qualifies for enrichment services and language services, the District shall ensure that the ELL receives both such services.

Monitoring Current and Exited ELLs and Evaluating Language Services

35. The District shall implement a system for monitoring the academic performance of current and recently exited (i.e., exited for less than one full school year) ELLs in general education classes. As part of this system, the District shall on a quarterly basis: (a) compile a list of current and recently exited ELLs who are enrolled in general education classes, and share this list with general education teachers; (b) collect data on the academic progress of current and recently exited ELLs in general education classes, including the data listed in paragraph 36 below; (c) provide such data to the exited student's guidance counselor; and (d) have the guidance counselor meet with the exited student to discuss whether he/she needs any support services (e.g., tutoring) or needs to be retested for possible reentry into the ELL program (i) within six (6) weeks of his/her exit, or within six (6) weeks of his/her first day of school if he/she

were exited at the end of the prior school year; and (ii) whenever the academic data collected each quarter reveals that the student is failing one or more subjects or standardized tests.

36. To monitor current and exited ELLs and to evaluate whether the language services are overcoming ELLs' language barriers, the District shall develop and maintain a database that disaggregates the following information: standardized test scores, achievement test scores, class grades, retention in grade rates, graduation rates, and enrollment in honors, special education, and enrichment programs. The database shall be operational by no later than December 1, 2003.

ANNUAL REPORTING TO THE UNITED STATES

37. The District shall provide to the United States annual reports fully detailing its efforts to comply with the provisions of this Settlement Agreement. The District shall submit the annual reports outlined herein each year by July 15th, with the first report due July 15, 2004. If any of the information required for the annual report in a particular school year is available in a document that the District already has prepared to comply with the No Child Left Behind Act (20 U.S.C. § 6301, *et seq.*) or other federal or state statute or regulation, the District may include the document in its annual report and indicate the section of the annual report to which the document applies. The annual reports shall include the following information about the school year preceding each annual report, unless otherwise specified:

- a. The number of students, by school and grade, enrolled in the District;
- b. The number of ELLs, by school, grade, native language, and language service (*e.g.*, bilingual & ESL, ESL only, POE), separately listing the number of ELLs who did not receive language services and the number of ELLs who declined language services;

c. The number of students, by school and native language, who indicated on the registration form or during their interaction with the intake personnel that a language other than English is spoken at home or by the student; the number of any such students who were assessed with the MAC II test to determine their English proficiency; and the number of any such students who ultimately were identified as ELLs;

d. Copies, in English and in Spanish, of all forms related to student registration and ELL eligibility that are provided to students, parents, and/or the general public, as well as a list of other languages in which those forms are available;

e. Copies of each school's list of non-teaching and teaching personnel available by language ability to provide translation assistance during registration;

f. A list of bilingual, ESL, and POE teachers, by school, grade, language(s), certification(s), and years experience;

g. A list of any training provided to District personnel in the following areas: completing the registration form and Survey; notifying teachers that a student needs to be assessed with the MAC II test; using the District's translation services; implementing the ESL curriculum; and teaching current and recently exited ELLs in regular education classes. For each such training, the content of the training shall be described and the date(s) of the training as well as the number and type of District personnel who attended the training shall be provided.

h. The number of ELLs, by native language, age, and grade level, who were served in POE classes (i) for one semester or less, and (ii) for more than one semester.

i. The number of students, by school, grade, native language, and language service (i.e., bilingual, ESL only, or POE), who were exited from the District's ELL program;

- j. The number of students, by school, grade, native language, and language service (i.e., bilingual, ESL only, or POE), who were re-entered into the District's ELL program;
- k. For each school and grade, a summary of the opportunities for horizontal and vertical articulation among ESL, bilingual, and general education teachers;
- l. For each school and grade, a list of the occasions per week in which ELLs are integrated with regular education students in the same classroom, program, or activity;
- m. The number of books in English in each school library, and the number of books in Spanish in each school library;
- n. The number of ELLs, by grade and native language, who were (i) referred for Basic Skills, (ii) found eligible for Basic Skills, and (iii) received Basic Skills services, including the nature and duration of such services and any language accommodation provided (e.g., math basic skills for 45 minutes a week with a bilingual aide).
- o. The number of ELLs, by grade and native language, who were (i) referred for special education, (ii) found eligible for special education, including the ELL's disability category, and (iii) received special education services, including the nature and duration of such services and the number of the model used (e.g., 45 minutes a day of resource with model 1).
- p. For each school, the number of special education teachers or aides with ESL or bilingual training, noting the type of training, or with foreign language fluency, noting the foreign language.
- q. The number of ELLs, by grade and native language, who (i) were referred for enrichment services, noting the referring individual (e.g., bilingual teacher, enrichment teacher, parent); (ii) found eligible for enrichment services; and (iii) received enrichment

services, noting the nature and duration of such services (e.g., 45 minutes of pull-out a week).

r. A description of the District's system for monitoring current and recently exited ELLs, confirming that: the data listed in paragraph 36 was collected; recently exited ELLs met with their guidance counselors within the six-week period and whenever quarterly data collection revealed that students were failing one or more subjects; and support services were available to recently exited ELLs at each school, including a description of such services.

s. A description of any material changes that the District plans to make to its: procedures for registering students, assessing ELLs, and assigning ELLs to classes; ESL or bilingual curriculum; training its ESL, bilingual, POE, or regular education teachers; basic skills, special education, or enrichment services; and system for monitoring current and exited ELLs.

t. A description of any policies or procedures that the District proposes to implement in connection with complying with this Settlement Agreement; and

u. Any other information that the District believes will be helpful.

38. The Bound Brook School District shall maintain records of all information pertinent to compliance with the terms of this Settlement Agreement and shall provide such information to the United States upon request.

ENFORCEMENT

39. The Bound Brook School District acknowledges and understands that, in the event of a breach by the District of this Settlement Agreement, the United States may initiate judicial proceedings to enforce the EEOA and the specific terms, commitments and obligations of the District under this Settlement Agreement.

40. The Bound Brook School District acknowledges and understands that the United

States, consistent with its responsibility to enforce the EEOA, retains the right to investigate and, where appropriate, initiate judicial proceedings concerning any future alleged violations of the EEOA by the District.

41. This Settlement Agreement, including signature page, ends on page seventeen (17). The following signatures indicate the consent of the parties to the terms of this Settlement Agreement. The date on which counsel for the United States signs the Settlement Agreement shall be the date that shall be considered to be the entry date of this Settlement Agreement.

For the United States:

R. Alexander Acosta
Assistant Attorney General

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Date Signed

For the Bound Brook, N.J. Board of Education:

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Date Signed

END OF SIGNATURES