

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into on the date of execution, set forth below, by and between Plaintiff Padres Latinos de las Escuelas de Springfield y Holyoke (“PLESH”), and Defendants Massachusetts Department of Elementary and Secondary Education (“DESE”), Massachusetts Board of Elementary and Secondary Education (“BESE”), Jeffrey C. Riley,¹ in his official capacity as Commissioner of Elementary and Secondary Education (hereinafter known as” State Defendants”); and Defendants Dr. Stephen Zrike, Jr., in his official capacity as Receiver (and Superintendent) for the Holyoke Public Schools (“HPS”), Marianne Currier, in her official capacity as Chief of Pupil Services for HPS, Sandy Donah, in her official capacity as Director of Student Services for HPS, Steve Mahoney,² in his official capacity as Executive Principal of Holyoke High School, Marc Swygart, in his official capacity as Principal of the Maurice A. Donahue School, Luis Soria,³ in his official capacity as Principal of the Dr. Marcella R. Kelly Full-Service Community School, Catherine Hourihan, in her official capacity as Principal of the H.B. Lawrence School, Noreen Ewick, in her capacity as Principal of the Lt. Elmer J. McMahan School, Amy Burke, in her capacity as Principal of the Joseph Metcalf School, Steven Moguel,⁴ in his official capacity as Principal of the Morgan Full Service Community School, Sarita Graveline,⁵ in her official capacity as Principal of the William R. Peck School, Sacha Garcia-Mailloux⁶, in her official capacity as Principal of the Lt. Clayre Sullivan School, Jacqueline Glasheen, in her official

¹ Substituted for party originally named, due to change in official capacity, under Fed. R. Civ. P. 25(d).

² See note 1.

³ See note 1.

⁴ See note 1.

⁵ See note 1.

⁶ See note 1.

capacity as Principal of the E.N. White School; and the City of Holyoke (Holyoke) (hereinafter known as “Holyoke Defendants”). Any person who assumes the official duties of any person named in this paragraph is bound by the terms of this Agreement.

WHEREAS, PLESH filed a Verified Complaint in *Padres Latinos de las Escuelas de Springfield y Holyoke v. Massachusetts Department of Elementary and Secondary Education et al.*, Civil Action No. 3:17-cv-11556-MGM in Federal District Court in Springfield, Massachusetts; and,

WHEREAS all the Defendants have denied liability for the claims set forth in the Verified Complaint; and,

WHEREAS the parties have agreed not to further litigate or seek judicial resolution of the factual and legal claims raised in the Verified Complaint; and,

WHEREAS, in consideration of the mutual covenants contained herein, PLESH and all the Defendants desire to settle and resolve all differences existing between them, resulting in the voluntary dismissal of the Verified Complaint.

It is THEREFORE agreed as follows:

1. This Agreement is in settlement of all claims which have been or might have been asserted in this action and shall not be considered an admission of any wrongdoing on the part of any of the Defendants. None of the statements or communications of the parties made or exchanged during settlement discussions shall be offered or admissible in evidence, in this or future actions. This Agreement shall not be filed with the Court in this action, but a proposed Order of Dismissal attached to the parties’ stipulation will make explicit reference to this

Agreement. Documents or writings formally agreed to, and/or executed by, all parties may be utilized, if necessary, in future actions.

2. Within three days of the date of execution of this Agreement (which shall be the date the last signatory executes the Agreement), PLESH, by its counsel, will file a Stipulation of Dismissal with Prejudice in the form attached as Exhibit A to effectuate the dismissal of the case captioned *Padres Latinos de las Escuelas de Springfield y Holyoke v. Massachusetts Department of Elementary and Secondary Education et al.* Civil Action No. 3:17-cv-11556-MGM with prejudice.
3. The Holyoke Defendants agree to implement the Principles and Procedures included here as Attachment A (hereinafter “Principles and Procedures”). The parties acknowledge that some of the Principles and Procedures may exceed current statutory and regulatory requirements, but nonetheless agree that they are intended to assist and facilitate HPS’s compliance with all applicable laws requiring provision by HPS of translated educational documents and interpretation of educational communications for limited English proficient (LEP) parents and guardians of HPS students.
4. The Receiver/Superintendent retains the authority, in his or her sole discretion, to modify any Procedure in the Principles and Procedures, provided that any such modification shall be substantially equivalent to the original Procedure and not inconsistent with the Introductory paragraph of the Principles and Procedures and paragraph 5 of this Agreement. For eight (8) years from the date of the execution of this Agreement, the Receiver/Superintendent shall afford plaintiff’s counsel

the opportunity to comment on any such proposed modifications in advance of their implementation. Plaintiffs' counsel shall respond within 20 days, and the Receiver/Superintendent shall consider any such comments submitted. The Receiver/Superintendent shall provide any final modification to PLESH and its counsel.

5. HPS shall implement procedures that will comply with the following standards for interpretation and translation services it will provide to LEP parents and guardians:
 - a. HPS shall implement and retain in place a reasonably well-functioning system for determining which parents/guardians of students in the district are LEP and require translation or interpretation into their primary or preferred language, for conducting an annual survey of parents/guardians regarding such language needs, and for updating its records;
 - b. HPS shall implement and maintain a reasonably well-functioning system to translate in timely fashion essential educational information and documents⁷ for

⁷ "Essential educational information and documents" includes the following: documents and information relating to education programs, opportunities, and services; HPS-sponsored or produced school activities; registration and enrollment in school and school programs; language assistance programs and notices of nondiscrimination; student discipline policies and procedures; special education and related services; parent handbooks; school and program choice options, including gifted and talented programs; Turnaround Plan; documents and materials relating to individual students, including report cards, notices of education-related meetings, proposed educational actions impacting a student or students, testing consent forms, proposed and final individual education programs ("IEPs"), IEP progress reports, IEP-related evaluations (when requested), disciplinary notices, and other documents regarding disciplinary proceedings; notices of education-related events and requests for parent permission for student participation in district/school sponsored programs and activities; authorization for release of information; health and wellness information; documents concerning extracurricular activities; and English learner testing notifications and results.

parents/guardians who are LEP, including information and documents posted on the HPS website;

- c. HPS shall implement and maintain a reasonably well-functioning system to provide oral interpretation to assist LEP parents/guardians in communications involving essential educational information;
- d. HPS shall maintain and implement a reasonably well-functioning system for interpretation and translation of communications involving investigation or inquiry into a student's potential violation of school rules, policies, or procedures or in which student discipline may result, or the provision of special education services, including the use of impartial interpreters (that is, interpreters unrelated to the matter at issue and without interest in the outcome). HPS shall not utilize LEP parents' children, other students, siblings or friends as interpreters and shall not ask a parent/guardian who is LEP to sign any document which has not been translated into the preferred language;⁸
- e. HPS shall implement a reasonably well-functioning system to ensure that interpreters are bilingual, fluent, and literate in the appropriate language, are adequately trained,⁹ and capable of interpreting effectively and accurately;

⁸ This provision for impartial interpreters does not prohibit HPS students who are involved in a course or program of interpreter training from serving as interpreters in appropriate circumstances, such as general assemblies and events (but not to include due process-type situations or those involving special education or any other matter concerning individual students).

⁹ "Adequately trained" means the interpreter is aware of and agrees to ethical and confidentiality requirements associated with interpretation and educational records and is certified or has undergone, or is undergoing, an HPS-sponsored training program or a similar program approved by HPS.

- f. HPS shall establish procedures to train its staff on applicable Principles and Procedures and the elements of effective translation and interpretation to help staff members carry out the duties set forth in this Agreement;
 - g. HPS will provide parents/guardians and adult students a general description of available services and procedures to follow in requesting interpretation and translation of essential educational information;
 - h. For the purposes of the above paragraphs, “reasonably well-functioning” describes a system that reasonably and regularly functions for the purposes intended but does not include irregular, isolated, or incidental failures of such systems (including failures beyond the control of school authorities). In addition, the “reasonably well-functioning” system described above reflects the different treatment of Spanish and low incidence languages described in the Principles and Procedures. “Timely fashion” in this Agreement shall mean either within the time frames required by law, if applicable, or within such time frame as the information can be effectively utilized or remains effective, viable, or applicable.
- 6 The terms of this Agreement may be enforced by PLESH in an action for specific performance for a period of eight (8) years from the date of the execution of this Agreement. If the Court finds that the Defendants have not substantially complied with any provisions of this Agreement, it may enter an order for specific performance. *‘Lack of substantial compliance’* with the implementation of Principles and Procedures required by paragraph 3, above, shall mean a failure to comply with one or more of the standards set forth in Paragraph 5, above. Prior to seeking enforcement of this Agreement, PLESH shall make reasonable efforts to

resolve disagreements without court intervention, as follows: If PLESH or plaintiff's counsel believes, at any time, that the Defendants are not in compliance with any material aspect of the Principles and Procedures, or this Settlement Agreement, counsel shall notify the then-current Receiver/Superintendent, in writing, and request a response or a proposed resolution. (PLESH or plaintiff's counsel shall also send a copy of this notification to counsel at DESE, to counsel for the City of Holyoke, and to the Office of the Attorney General). If the Receiver/Superintendent does not respond or propose a reasonable resolution, or otherwise fails to propose or implement resolution to the satisfaction of PLESH or plaintiff's counsel within 45 days of counsel's notice, and PLESH or plaintiff's counsel reasonably believes that such claimed lack of compliance constitutes a violation of applicable law or is inconsistent with this Agreement, PLESH and/or counsel may only thereupon initiate a lawsuit seeking a remedy under this Agreement, and Defendants reserve all defenses. In the event that state receivership of HPS has ended, such an action for specific performance shall not name the State Defendants (or any other state official).

7. For the entire eight-year period this Agreement remains in effect, Defendants¹⁰ will provide undersigned counsel or their successors by August 15 for the immediately preceding school year, the following data:

¹⁰ This provision does not apply to BESE, and does not apply to DESE and the Commissioner of Elementary and Secondary Education if state receivership of HPS has ended. Further, during the period of receivership, because DESE and the Commissioner do not have direct access to HPS records, they will be responsible only for directing compliance by the Receiver with these provisions.

I. School-level data

- a. Number and percentage of families in each HPS school requesting translation or interpretation services, by school, grade, and language category.
- b. Number of Family Language Preference Surveys provided to families upon enrollment and/or at the beginning of the school year, expressed as a raw number and as a percentage of total HPS enrollment.
- c. Number of formal scheduled parent-teacher conferences that LEP parents/guardians attend, by school; number of formal scheduled parent-teacher conferences in which information is provided in the preferred language of the LEP parent/guardian; number of formal scheduled parent-teacher conferences attended by LEP parents/guardians disaggregated by level of interpretation provided (Tier 1, Tier 2, Tier 3, or contractor, including the name of the contracting entity/ies).
- d. Number of formal meetings, formal hearings, or formal interviews involving investigation or inquiry into a student's potential violation of school rules, policies or procedures in which discipline may ultimately result in which one or more of the student's parents/guardians is LEP, disaggregated by school and by level of interpretation provided (Tier 1, Tier 2, Tier 3, or contractor, including the name of the contracting entity/ies).

- e. Number of school-wide communications sent by telephone (robo-call) and/or electronically; number of school-wide communications sent by telephone (robo-call) and/or electronically with translation or interpretation into Spanish.
- f. Number of school-wide (and school-sponsored) public events, number of school-wide public events with Spanish interpreter provided.

II. District-level data

- a. Number of district-wide (and district-sponsored) public events, and number of district-wide public events with Spanish interpreter provided.
- b. Number of district-wide communications issued to families by Superintendent's/Receiver's office, number of district-wide communications issued to families by Superintendent's/Receiver's office translated into Spanish.
- c. Names, titles, employment dates, school assignment and interpreter tier level, of all interpreters designated as Tier 1, Tier 2, or Tier 3 interpreters under the Principles and Procedures, and language(s) in which each is competent to interpret, including training dates for Tier 2 and Tier 3 interpreters.
- d. List of all contractors engaged to translate IEPs, IEP progress reports, and/or IEP-related evaluations.

- e. Number of languages for which contracts are in place to provide interpretation and translation services, with language category.
- f. Results of a yearly survey of LEP parents/guardians, to be distributed at mid-year, regarding their experience with the provision of interpretation and translation services. The parties will work together to develop one or more methods of gathering input from LEP parents/guardians, but HPS will make the final determination as to any document that the district sends to LEP parents/guardians.

III. Special Education data

- a. Number of special education-related meetings or interviews conducted with LEP parents/guardians, disaggregated by school and by level of interpretation provided (Tier 1, Tier 2, Tier 3, or contractor, including the name of the contracting entity/ies) and by event category (e.g., IEP Team meeting, manifestation determination).
- b. Number and percentage of special education-related translations provided timely, under time standards set forth in the Principles and Procedures and in Paragraph 5 of this Agreement, disaggregated by school, by language (i.e., Spanish or other language) and by document category. “Special education-related translations” includes, but is not limited to, translations of assessments, evaluations, Individual Education Plans (IEPs), IEP progress reports, Functional Behavior Assessments (FBAs), Behavior Intervention Plans (BIPs), and any special education-specific disciplinary documents (e.g., documents related to manifestation determinations).

- c. Number and percentage of special education-related translations provided untimely as defined by the Principles and Procedures and/or Paragraph 5 of this Agreement (but irrespective of any change in meeting date), disaggregated by document category (i.e., IEPs or other special education related documents) and degree of lateness (i.e., 1-14 days late, 15-45 days late, 46 days or more late).
- d. Current timeliness of special education-related translations, that is, as of the time of the provision of the data, whether there is a backlog of translations or not and the extent of the backlog, if any.

IV. Documentation to be retained by HPS and made available for inspection by Plaintiff or its counsel upon request (with the exception of any reasonable redaction for appropriate purposes, such as student or personnel confidentiality, proprietary/commercial information, etc.)

- a. Documentation of annual training for each Tier 3 interpreter, including date(s) of training, length of training, and name(s) and qualifications of trainer(s).
- b. For each appropriate or responsible staff member trained on Principles and Procedures, the title, school or district assignment, and date of training.
- c. All school-wide, class-wide, and/or district-wide communications to parents/guardians maintained in accordance with Paragraph II (7) of the Principles and Procedures.
- d. Copy of special education informational packet written in English and Spanish.
- e. Log of school-wide and school-sponsored events in which Spanish interpretation was provided.

- f. Log of district-wide and district-sponsored events in which Spanish interpretation was provided.
- g. A list or export from the database of the names of district employees, disaggregated by school, who are competent and available to provide translation and interpretation services in the low-incidence languages represented among HPS's parents/guardians in accordance with Paragraph V (4) of the Principles and Procedures, redacted by HPS as appropriate.
- h. Any documentation that may be created as the result of audits performed of translations of IEP documents by HPS contractors.

Reporting by PLESH. In addition, to the extent it becomes aware, and within a reasonable time of its learning such information, PLESH or its counsel shall report in writing to the Receiver/Superintendent any and all non-confidential information it has concerning on-going provision of the language services provided for herein, including any perceived errors or procedural irregularities, as well as satisfactory experiences.

- 8. Defendants shall pay to Plaintiff the amount of \$ 230,000 (of which \$65,000 will be paid by the Holyoke defendants and \$165,000 will be paid by the State defendants), to compromise and settle Plaintiff's claims for attorneys' fees and litigation expenses and costs (including, without limitation, expert fees and costs). The payment made by Defendants pursuant to this paragraph constitutes the full compromise and settlement of all claims for attorneys' fees and litigation expenses and costs related to this Action: (i) that Plaintiff has, as of the execution date of this Agreement, against all Defendants in this Action; (ii) that Plaintiff

might have against Defendants for activity occurring after the execution date, including without limitation for activity to monitor the implementation of this Agreement, provided, however, that plaintiffs in any successful action for specific performance under this Agreement shall be entitled to seek payment of costs and attorney fees related to the action for specific performance. Payments under this paragraph shall not be construed as an admission or constitute evidence that any Defendant is liable to Plaintiff for the payment of attorneys' fees and litigation expenses or costs in, or related to, this Action, but rather represents only the compromise and settlement of a disputed claim. The compromise and settlement of Plaintiff's claim for attorneys' fees and litigation expenses and costs against the Defendants shall not establish: (1) a "reasonable" hourly rate for Plaintiff's counsel or any other counsel; (2) the "reasonableness" of any legal services or activities performed by Plaintiff's counsel in this or any other action; or (3) the "reasonableness" of any item of litigation expenses or costs in this or any other action. The timing of payment of the agreed amount is dependent on appropriation by the Legislature, which Defendants shall diligently pursue.

V. Additional Provisions

- a. Entire Agreement: This Agreement contains all the agreements, conditions, promises and covenants between Plaintiff and Defendants and their respective counsel, regarding matters set forth in this Agreement and supersedes all prior or contemporaneous agreements, drafts, representations or understandings, either written or oral, with respect to the subject matter of this Agreement.

- b. **Binding Effect:** Plaintiff and Defendants represent and warrant that they have authority to enter into this Agreement and that this Agreement shall be binding upon, and inure to the benefit of, their successors and assigns. Each of the persons executing this Agreement on behalf of a Plaintiff or Defendant represents and warrants that he or she has the authority to do so.
- c. **Release:** Plaintiff fully, finally and forever releases, relinquishes, discharges, and waives any and all claims for injunctive and declaratory relief against the Defendants concerning the facts alleged, and the causes of action claimed, in the Verified Complaint, from the beginning of time until the end of the term of this Agreement, excepting the provisions for enforcement herein. This release also includes any and all claims for injunctive or declaratory relief against the Defendants arising out of or relating to the precise subject matter described in the Verified Complaint, that is, subject matter concerning the provision of translation or interpretation services for parents/guardians who are LEP, from the beginning of time until the date of execution of this Agreement, and any and all such claims PLESH itself may have under 20 U.S.C. § 1703 (the Equal Education Opportunity Act), 42 U.S.C. § 2000d (“Title VI”), and 34 C.F.R. § 100.5, or any other federal or state law pertaining to the Defendants’ provision of translation or interpretation services for parents/ guardians who are LEP.
- d. **Written Modification:** Plaintiff and Defendants may not modify any provision of this Agreement, except by written consent of Plaintiff and Defendants.

- e. Interpretation: Plaintiff and Defendants participated in the drafting of this Agreement and, accordingly, any claimed ambiguity shall not be presumptively construed for or against any Plaintiff or Defendant.
- f. Execution: This Agreement may be executed in counterparts (the last date of execution of any counterpart constituting the execution date), each of which shall constitute an original instrument and all of which together shall constitute one and the same Agreement.
- f. Eleventh Amendment Immunity: Except as specified herein, nothing in this Agreement shall constitute a waiver by the Commonwealth of its immunity under the Eleventh Amendment of the United States Constitution.
- g. No Consent Decree: This Agreement shall not constitute, be construed as, or otherwise be incorporated into a consent decree or other order of the Court.

On behalf of Plaintiffs:

**PADRES LATINOS DE
LAS ESCUELAS
DE SPRINGFIELD Y HOLYOKE:**

By their attorneys:

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Dated: _____

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Dated: _____

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Dated: _____

On behalf of Defendants:

MASSACHUSETTS DEPARTMENT OF
ELEMENTARY & SECONDARY
EDUCATION; MASSACHUSETTS
BOARD OF ELEMENTARY &
SECONDARY EDUCATION; JEFFREY
C. RILEY, Commissioner,
Massachusetts Department of Elementary &
Secondary Education; STEPHEN ZRIKE,
JR., Receiver and Superintendent, Holyoke
Public Schools.

By their attorneys:

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Dated: _____

Katherine P. Craven

Chairperson, Massachusetts Board of
Elementary and Secondary Education

Dated: 07/10/2020

Jeffrey C. Riley
Commissioner, Massachusetts Department
of Elementary and Secondary Education

Dated: _____

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Dated: _____

Founder and Chair, PADRES LATINOS
DE LAS ESCUELAS DE
SPRINGFIELD Y HOLYOKE

Dated: _____

Stephen Zrike, Jr.
Receiver and Superintendent,
Holyoke Public Schools

Dated: _____

On behalf of Defendants:

MARIANNE CURRIER, Chief of Pupil Services, Holyoke Public Schools; SANDY DONAH, Director of Student Services, Holyoke Public Schools; STEVE MAHONEY, Principal, Holyoke High School; MARC SWYGERT, Principal, Maurice A. Donahue School; LUIS SORIA, Principal, Dr. Marcella R Kelly Full-Service Community School; CATHERINE HOURIHAN, Principal, H.B. Lawrence School; NOREEN EWICK, Principal, Lt. Elmer J. McMahan School; AMY BURKE, Principal, Joseph Metcalf School; STEVEN MOGUEL, Principal, William G. Morgan School; SARITA GRAVELINE, Principal, William R. Peck School; SACHA GARCIA-MAILLOUX, Principal, Lt. Clayre Sullivan School; JACQUELINE GLASHEEN, Principal, E.N. White School; and the CITY OF HOLYOKE, MASSACHUSETTS,

By their attorneys,

Tasha Marshall, Assistant City Solicitor
Crystal Barnes, Acting City Solicitor
Holyoke Law Department
20 Korean Veterans Plaza
Holyoke, MA 01040
(413) 322-5580

Dated: _____

Alex B. Morse
Mayor, City of Holyoke

Dated: _____