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**U.S. Department of Justice
Civil Rights Division
Educational Opportunities Section**

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July 22, 2011

By Electronic Mail

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Re: EEOA Review of MA Department of Elementary and Secondary Education

Dear Ms. Miller, Ms. Healey, Ms. Schneider, and Ms. Curran:

As we discussed during our call on July 8, the Civil Rights Division of the United States Department of Justice has been reviewing the compliance of the Massachusetts Department of Elementary and Secondary Education (MADESE) with the Equal Educational Opportunities Act, 20 U.S.C. § 1703(f) (EEOA), and would like to work collaboratively with MADESE and the Massachusetts Board of Elementary and Secondary Education's (Board) to ensure compliance therewith.¹ Since initiating this review in April 2009, we have focused our attention primarily on MADESE's monitoring of the Boston Public Schools' (BPS) English Language Learner (ELL) programs. We also have examined MADESE's guidance governing the four categories of training for Sheltered English Immersion (SEI) teachers, and its monitoring of this training and other aspects of school districts' ELL programs. In addition, with the help of our consultant, Dr. Margarita Calderón, we have evaluated the four categories of training approved by MADESE

¹ We also discussed these matters with Ms. Curran and Ms. Schneider on calls in April, May, and June 2011.

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and offered in BPS, as well as the training's impact on the quality of SEI content instruction delivered to ELL students in BPS.

Even prior to initiating the 2009 review, we had concerns about the inadequate number of category trained teachers serving ELL students based on our 2007 EEOA investigations in the Somerville, Worcester, and [REDACTED] school districts. These investigations revealed, *inter alia*, SEI teachers in all three school districts who lacked category training. Our current review has revealed that MADESE's own monitoring since 2004 has identified 275 school districts (70% of those in the Commonwealth) with inadequately trained SEI teachers. See Letter from D. Curran to E. McCarthy (Dec. 23, 2010), at 6-8 & List of Districts with Findings ("Dec. 23, 2010 Letter").² As a result, thousands of ELL students receive content instruction from untrained teachers in these school districts.³ Districts that have tried to require their SEI teachers to complete the four categories of training have struggled because MADESE has not mandated the training.

The ability of teachers to shelter content instruction for ELL students still striving to acquire English proficiency is a critical component of the SEI program that Massachusetts has chosen to implement. MADESE itself has determined that category training is needed to prepare teachers to shelter content effectively. See Report to the Legislature: English Language Acquisition Professional Development (Mar. 2010) at 7-8, 10-11 (2010 Report).⁴ However, MADESE's own monitoring activities over a seven-year period demonstrate that policies that encourage but do not mandate category training have proven ineffective. By MADESE's estimates, almost 68% of teachers have yet to start the category training,⁵ and at least 45,000 teachers need training in one or more of the four categories "to be qualified to work with ELLs." The State of the State: A Report on ELLs in MA, at 15 (May 5-7, 2011 MATSOL Conference).⁶ The pervasiveness and the persistence of the problem in at least 275 districts statewide make plain that the source of the problem is not only at the district level but also at the state level. Accordingly, we have determined that MADESE has failed to take appropriate action to overcome ELL students' language barriers by not requiring SEI teachers to receive category or other SEI training when its own monitoring shows that the voluntary approach to training has failed to implement the SEI model effectively.

Furthermore, we have determined that the substance of the category training, while

² The December 23, 2010 Letter and the List of Districts with Findings identify 280 school district with unqualified SEI and ESL teachers, including five with only ESL-based findings.

³ In BPS alone, the reviews conducted by us and MADESE revealed that at least 4,000 ELL students were not receiving SEI instruction in SY2009-10. Data from SY2010-11 show that roughly 5,000 ELLs in BPS received SEI instruction without category trained or ESL licensed teachers. See BPS Staff Leveraging Report for Secondary Overall Sheltered English Immersion Core Content at 1 (Mar. 2011); BPS Staff Leveraging Report for Elementary English Language Education at 7 (Mar. 2011).

⁴ See also Report to the Legislature: English Language Acquisition Professional Development (Mar. 2009) at 1-2, 3, 4 (2009 Report); Report to the Legislature: English Language Acquisition Professional Development (Feb. 2008) at 4-7 (2008 Report).

⁵ See Dec. 23, 2010 Letter at 9 (reporting that almost 75% of teachers had yet to start the category training).

⁶ See also 2010 Report at 11 (identifying 50,000 teachers needing category training).

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positive in certain respects, does not prepare SEI teachers adequately to deliver the state-mandated SEI instruction and therefore falls short of what the EEOA requires. Based on our telephone and written communications with Dianne Curran and Esta Montano, Director of the Office of English Language Acquisition and Academic Achievement (OELAA), MADESE shares the opinion that the four categories require updating. See, e.g., Dec. 23, 2010 Letter at 6; see also The State of the State at 22. This conclusion is underscored by our observations and Dr. Margarita Calderón's evaluation of the four category trainings. Because we believe MADESE must mandate SEI training for the large numbers of SEI teachers who remain unqualified, we would like to work collaboratively on improving the category training so that an adequate SEI training program can be mandated and implemented, [REDACTED].

[REDACTED] this letter reflects steps that MADESE and the Board would take to address the concerns raised in this letter and satisfy their legal obligations under the EEOA. We are confident that we can voluntarily resolve the issues identified in this letter and that this is in the best interest of ELLs in Massachusetts, who have already gone far too long without the SEI services to which they are legally entitled. We also are confident that we can work collaboratively to develop an adequate SEI training that meets the requirements of the EEOA. We look forward to discussing this letter and [REDACTED] in our July 26 call.

I. Factual Background Regarding The SEI Program And Category Training

Our conclusion that MADESE must mandate SEI training and improve the category training to an adequate level in order to meet its EEOA obligation to implement the state-mandated SEI program appropriately and effectively is supported by the following facts.

A. MADESE Does Not Mandate Category Training For SEI Teachers Even Though It Is An Integral Component Of The SEI Program Model.

MADESE has determined that "elementary and secondary educators who teach English language learners *must* complete all four categories of professional development in order to develop the knowledge and skills required to effectively support English language development and deliver sheltered content instruction." 2010 Report at 10 (emphasis added); see also id. at 7-8. Despite this determination, MADESE has decided not to mandate the category training it has deemed necessary to deliver the state-required SEI model. See Dec. 23, 2010 Letter at 6.

When Massachusetts adopted the SEI program model, it assumed an obligation to ensure that content teachers were trained to shelter content for students acquiring English. On November 5, 2002, the Massachusetts voters approved Chapter 386 of the Acts of 2002, known as "Question 2." See 2010 Report at 1. Question 2 amended M.G.L. ch. 71A, the state law governing ELL education, by replacing the Transitional Bilingual Education (TBE) program with an SEI program. See id. at 1. MADESE developed and adopted an SEI program model to comply with Question 2, and required all school districts in the Commonwealth to implement the program in September 2003. See id. at 2.

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The SEI program developed by MADESE requires two forms of instruction: English as a Second Language (ESL) and sheltered content instruction taught in English. State law requires that ELL students, with limited exceptions, receive SEI instruction until they demonstrate proficiency in English. M.G.L. ch. 71A, § 2; 2008 Report at 22. The shift from TBE to SEI created a demand for teachers with the specialized skill of delivering content taught in English to students lacking proficiency in English. See 2010 Report at 2. Because few teachers in Massachusetts were trained to shelter English-only content instruction to ELL students when Question 2 was enacted, MADESE appropriately recognized that the Commonwealth needed a professional development regimen that would enable its teachers to deliver content to ELL students in a SEI format. Id.

On June 15, 2004, MADESE issued guidance emphasizing the importance of having “well trained and qualified staff in SEI classrooms.” Mem. from Commissioner of Education D. Driscoll to Superintendents of Schools, Charter School Leaders, Educator Preparation Program Providers, & Other Interested Parties (June 15, 2004) at 1 (Commissioner’s Mem.). “After reviewing relevant research and consulting with leaders in the field of English language learner educators in Massachusetts and nationally,” MADESE developed trainings in four categories to address “the most common gaps in the knowledge and skill base of educators implementing English immersion.” 2008 Report at 5. While developing the training was a positive step, MADESE did not mandate that SEI teachers complete the four categories of training and indicated that it did not intend to do so as of its December 23, 2010 letter to us. See Dec. 23, 2010 Letter at 6. We are pleased that our communications with MADESE since April 8, 2011, reflect an interest in resolving the United States’ compliance concerns by mandating an SEI training that improves upon the category training, [REDACTED].

B. MADESE’s Failure To Mandate Category Or Other SEI Training Has Led To A Significant Shortage Of Qualified SEI Teachers

MADESE’s failure to mandate category or other SEI training has left many districts ill-equipped and unprepared to serve their ELL populations. In 2008, five years after districts began implementing the SEI model, MADESE acknowledged that relatively few teachers were trained to deliver SEI instruction. See 2008 Report at 7. At that time, MADESE estimated that the “the total number of fully trained [SEI] teachers must be 995 or fewer,” and “that about 6,000 to 7,000 teachers statewide require more training before they are fully prepared to serve English language learners in their classrooms.” Id.

By 2010, the number of teachers MADESE identified as needing category training had increased almost tenfold. As of March 2010, there were approximately 70,400 teachers in the Commonwealth, and MADESE estimated that “[a]t least 50,000 teachers [71%] need to be trained in one or more of the four categories in order to be prepared for an English language learner entering their classroom.” 2010 Report at 11; see also Letter from Commissioner Chester to Members of the General Court (Mar. 2010) at 2. In May 2011, MADESE reported that only 32% (21,955 of 67,914) of teachers had completed one or more categories and that “at least

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45,000” continue to need training. State of the State at 15.⁷ MADESE also informed us that 275 of the school districts monitored as of December 2010 (representing 70% of the districts in the Commonwealth)⁸ had inadequately trained SEI teachers. See Dec. 23, 2010 Letter at 8 and appended List of Districts with Findings. Indeed, many of these districts (i) failed to have qualified staff in SEI classrooms; (ii) had no internal SEI professional development/training monitoring procedure in place; and (iii) failed to provide a list of SEI-trained teachers demonstrating that district’s compliance with MADESE’s reporting requirements.

In an attempt to train the 50,000 teachers that MADESE identified as needing training, MADESE provided category training to approximately 180 districts from 2004 to 2008. See 2008 Report at 17-18. In addition, MADESE recognized that it did not have enough SEI-trained teachers and requested \$1,000,000 in FY09 to “enable the Department to continue training elementary and secondary content teachers of English language learners to shelter content instruction as required by state law.”⁹ *Id.* at 10. However, MADESE received only \$470,987 in funding from the Commonwealth for FY09 and estimated that training could be provided to only an additional 3,700 teachers with that level of funding. See 2010 Report at 1. Each summer between 2004 and 2010, MADESE has conducted a Train-the-Trainer program enrolling approximately 40 teachers from 20 districts. Dec. 23, 2010 Letter at 2-3. Despite MADESE’s efforts since 2004 to train some of the 45,000 to 50,000 teachers who need SEI training, these efforts will not satisfy MADESE’s own requirements under the voluntary approach to training.

C. MADESE’s Monitoring Process Has Not Ensured That School Districts Lacking Qualified SEI Teachers Obtain Them Within A Reasonable Period Of Time

While we are pleased that MADESE monitors whether SEI teachers are category trained and ELL students receive SEI content from category-trained teachers as part of its Coordinated Program Reviews (CPRs), this monitoring has not adequately addressed the significant shortage of SEI-trained teachers. Our review of the random sampling of CPRs from sixteen districts that MADESE produced, as well as the records of BPS, Worcester, Somerville, and Holyoke, show that MADESE’s monitoring process has not produced sufficient numbers of fully category trained SEI teachers to serve all of their ELL students within a reasonable period of time. MADESE’s decision not to mandate category or other SEI training has undermined its own monitoring efforts and left many districts ill-equipped and unprepared to meet the needs of their ELL populations.

⁷ See Dec. 23, 2010 Letter at 9 (approximately 25% (21,857) of teachers had completed one or more categories).

⁸ 117 of 392 school districts in Massachusetts had no findings. However, the data we received from MADESE may have omitted some schools that have not yet been evaluated for the 2010-2011 onsite year, the last set in the 6-year cycle.

⁹ The legislature appropriated \$397,937 in FY10, \$470,987 in FY09 and FY08, \$500,000 in FY07, and \$1,000,000 in FY06 and FY05 to support professional development for educators implementing sheltered English immersion and teaching English language acquisition to ELLs. 2008 Report at 3; 2010 Report at 1. Commissioner Chester noted that “the need for teacher training, ESL certification, and ELL services is growing at a time when fiscal support is declining.” Letter from Commissioner Chester to Members of the General Court (Mar. 2010) at 3.

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For example, although MADESE monitored BPS and Worcester, identified insufficient category trained teachers, and required corrective action of both districts, the corrective action did not result in the training of a sufficient number of SEI teachers within a reasonable period of time.¹⁰ As of January 2010, only 23% of elementary teachers, 7% of middle school teachers, and 5% of high school teachers in the Worcester Public Schools had received SEI training in all four categories – a mere 16% of the district's teachers. In BPS, our most recent data show that 67% of the SEI teachers at the secondary level and 48% of those at the elementary level have yet to complete category training. See Staff Leveraging Report for Secondary SEI Teachers' Permanent and Provisional Classification at 1; Staff Leveraging Report for Elementary SEI Teachers' Permanent and Provisional Classification at 1. These deficiencies in the State's monitoring and enforcement of category training have left thousands of ELL students without SEI-trained teachers in one or more content classes. For example, in BPS only half of the ELLs in grades 6-12 and only a quarter of the elementary ELLs received SEI instruction by teachers trained in Categories 1, 2, and 4 or certified in ESL in SY2010-11. See BPS Staff Leveraging Report for Secondary Overall Sheltered English Immersion Core Content at 1 (Mar. 2011); BPS Staff Leveraging Report for Elementary English Language Education at 7 (Mar. 2011).

These shortcomings in Boston and Worcester are the rule and not the exception, and our own recent experiences in BPS reinforce the importance of affirmatively mandating category training. Even after BPS was asked by MADESE and the United States to remedy the large number of untrained SEI teachers, the District is having difficulty convincing teachers to complete the training because they and their union know that MADESE does not require the training. Given that most districts share responsibility for deciding their annual mandatory professional development with their teachers and/or their unions and the fact that a revised and adequate category training is likely to be [REDACTED], it is not reasonable to expect (under MADESE's voluntary approach to SEI training) that every district enrolling an ELL student devote all of its own professional development to this type of training each year, possibly for years on end given teacher turnover.

MADESE's decision not to mandate category or other SEI training is difficult to understand in light of the Commonwealth's unambiguous requirement that teachers receive an ESL certification in order to teach ESL classes - the other pillar of the SEI model. See March 2010 Report at 14 ("In order to teach English as a second language (ESL), a teacher must be licensed in ESL or ELL."). For example, one training program used by MADESE to prepare teachers for their ESL certification exam is the Massachusetts English Language Teacher Initiative (MELT), a thirteen-day training program. March 2010 Report at 13.

Despite MADESE's guidance and monitoring since 2004, the percentage of fully trained teachers remains inadequate to deliver the SEI model to a growing ELL population, which has increased 51% between 2000 and 2010. See State of the State at 4. MADESE must require

¹⁰ We note that one corrective action plan developed for the Frontier Regional School District in November 2010 allows each SEI teacher in the school district four years to complete the category training. See Dec. 23, 2010 Letter at Attachment 8. At this pace, assuming all trained SEI teachers stay, the district would not have adequate category trained teachers until 2014, ten years after the SEI program was required.

districts to do more in order to implement the state-mandated SEI program appropriately and effectively.

D. The Current Category Training Does Not Prepare Teachers Adequately to Deliver SEI Instruction and Should Be Revised

In 2010, MADESE acknowledged that “most classroom teachers in Massachusetts did not acquire the skills and knowledge required to effectively teach English language learners and shelter content instruction during their teacher preparation programs.” 2010 Report at 7. This issue had been identified two years before, yet there has been no change in MADESE’s position to correct this problem. See Letter of Jeffrey Nellhaus to Members of the General Court at 2 in 2008 Report. When we explored by phone and letter why MADESE has not mandated category training, one reason cited by MADESE was its reluctance to mandate the training as currently constituted. See Dec. 23, 2010 Letter at 6.¹¹ This basis has been reiterated in phone calls since April 2011.

We share MADESE’s reluctance to mandate the four categories in their current form based on our own review and the evaluation conducted by Dr. Margarita Calderón. After observing these trainings and over 200 classrooms in BPS between October 2010 and February 2011, we have concerns with respect to the adequacy of the category trainings in their present form. Below we briefly summarize those concerns. As we have discussed, our goal is to work collaboratively with MADESE and the Board to ensure that the Commonwealth’s SEI training satisfies federal requirements and results in adequately trained SEI teachers.

As an initial matter, the training does not reflect important, current research and knowledge about the acquisition of second language proficiency and literacy that teachers of ELLs need to learn and apply. MADESE’s current category training remains based, almost exclusively, on research and practices from 1997 to 2001. See 2010 Report at Attach. 3 (citing research used to develop the categories). Given that MADESE has expressed, during our conference calls, its intention to review and revise its current training, such changes should implement current research and knowledge about second language acquisition and literacy. In addition, the revised SEI training should focus on developing instructional skills, placing greater emphasis on how to explicitly teach academic vocabulary, reading comprehension skills, and writing to ELLs at different grades and proficiency levels. The SEI training also should include ways to ensure the transfer of the training to the classroom through more modeling and practice time, as well as an evaluation and coaching/mentoring component that includes SEI administrators tasked with evaluating SEI teachers and that tracks teachers after the training and measures student impact from the training.

The current categories do not cover vocabulary, reading comprehension, and writing

¹¹ MADESE indicated that it was reviewing the training for possible revisions, including observing trainings by trainees from the 2010 summer Train-the-Trainer program and having WestEd, a publicly- and privately-funded research and development agency, study the category training model and practices. See id. at 3, 6.

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sufficiently to prepare SEI teachers to teach content to ELL students across proficiency levels. We observed several trainings that did not allocate enough time to explain and practice research-based processes to sufficiently prepare SEI teachers. For example, the Category 4 training we observed devoted only one hour and fifteen minutes to a presentation and discussion on vocabulary even though strategies for developing content vocabulary are one of its stated areas of focus.

Any revised category training should incorporate more vocabulary development and introduce it as a separate category early in the training because substantial vocabulary is crucial to learning to read and write. Students learn vocabulary words from different tiers of vocabulary (e.g., tier 3 – content words; tier 2 – connectors, polysemous, homonyms, phrasal clusters, etc.; tier 1 – basic words that trouble ELLs). Any future training should help content teachers to determine how to select words to teach according to their students' language and reading levels.

The future SEI training needs a greater focus on teaching reading comprehension skills in sheltered content classrooms (e.g., prediction, summarizing, making inferences, and identifying important information). Without reading comprehension skills and sufficient academic vocabulary, ELL students will not be able to master content knowledge regardless of how much sheltering the SEI teacher offers. The reading component also should teach phonemic awareness, phonological awareness, decoding, word knowledge, and fluency while taking into account a particular student's age and fluency (e.g., ELLs in the primary grades and those with interrupted formal education need all of these while most secondary and long-term ELLs need less of these). The training also should emphasize reading strategies for ELLs, such as partner reading, reading aloud, and teacher think-alouds. In addition, the training should explain the limitations of using silent reading with ELLs because studies have shown that silent reading does not work for ELLs (Slavin & Calderón, 2001; Francis et al., 2008; Calderón & Minaya-Rowe, 2011), and yet we observed silent or independent reading in about 90% of the BPS classrooms.

Writing is often the most difficult domain for ELLs and any training should model how to develop for ELLs the type of writing their teachers are requiring (e.g., expository/procedural, persuasive, essays, or research texts), how to teach editing for each type, and how to grade written work according to proficiency levels. We routinely observed lessons on writing that did little to generate quality writing, such as students filling in worksheets. The future SEI training also should include more comprehensive instruction on teaching ELLs the steps of writing and should model different types of writing for the content areas (e.g., creative writing, scientific lab reports, mathematical problem-solving, and social studies research papers). The training also should model how to modify writing assignments for ELLs' different proficiency levels and use rubrics to prompt and evaluate writing that is appropriate to their proficiency levels.

In addition, we recommend that MADESE focus on developing different teaching techniques for primary versus secondary level students. For example, the word knowledge needed for young children is very different from the depth of knowledge of vocabulary needed in the upper grades and high school, and any teaching method should be adjusted accordingly. Literacy approaches for elementary and secondary ELLs also differ. MADESE's approach to

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Category 4 training is consistent with this approach. See 2010 Report at 11 (describing Categories 4B and 4C). The trainings also should be modified to include more modeling, practice time, and research-based approaches that support transfer of the training into the classroom.

The category training should have other mechanisms in place to ensure training transfer into the classroom, such as requiring administrators who evaluate SEI teachers to receive training on SEI strategies and how to evaluate SEI teachers. MADESE appears to share this view given its piloting of the first administrators' SEI professional development training during the 2009-10 academic year. See 2010 Report at 10; see also State of the State at 18. During this training, principals learned about the factors that influence second language acquisition, research-based strategies specifically designed for ELLs, and lessons based on content and language objectives. Id.; see also State of the State at 18. While this is a step in the right direction, [REDACTED]

[REDACTED] We look forward to discussing these ideas, among others, in more depth to develop an adequate training to be mandated for all SEI content teachers and SEI administrators who evaluate SEI teachers.

II. Legal Analysis

The EEOA provides that “[n]o State shall deny equal educational opportunities to an individual on account of his or her race, color, sex, or national origin, . . . by the failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs.” 20 U.S.C. § 1703(f). The statute specifically obligates state education agencies to ensure that school districts furnish services that enable ELL students to overcome their language barriers and participate equally in educational programs. See, e.g., Horne v. Flores, 129 S.Ct. 2579, 2589 (2009) (“The question at issue . . . is not whether Arizona must take ‘appropriate action’ to overcome the language barriers that impede ELL students. Of course it must.”); United States v. City of Yonkers, 96 F.3d 600, 620 (2d Cir. 1996) (“The EEOA also imposes on states the obligation to enforce the equal-educational-opportunity obligations of local educational agencies.”); Gomez v. Illinois State Bd. of Educ., 811 F.2d 1030, 1038 (7th Cir. 1987) (“[T]he EEOA expressly contemplates that relief is to be obtained from the state and its agencies.”); Idaho Migrant Council v. Bd. of Educ., 647 F.2d 69, 71 (9th Cir. 1981) (“We merely hold that the State Agency is . . . required under federal law to ensure that needs of students with limited English language proficiency are addressed.”).

To determine if the ELL programs administered by states and implemented by school districts comply with the EEOA, the United States applies the three-part legal standard promulgated in Castañeda v. Pickard, 648 F.2d 989, 1009-10 (5th Cir. 1981). First, the ELL program must be informed by a sound educational theory. Id. at 1009. Second, the program

must be reasonably calculated to implement effectively the educational theory adopted by the particular school. Id. Finally, after a period of time sufficient to give the program a legitimate trial, the results of the program must show that language barriers are in fact being overcome. Id. at 1010.

Applying these legal principles to the facts outlined above, the United States believes that MADESE has not complied with the EEOA in two respects. First, MADESE has violated the third prong of Castafieda by not mandating SEI training when MADESE's own evidence and monitoring establish that the current voluntary approach to category training has not produced an adequate number of qualified SEI teachers over time. Second, MADESE has not satisfied the second prong of Castafieda because its category training does not adequately train teachers to deliver SEI content instruction to ELL students appropriately.

A. To Comply With The EEOA, MADESE Must Mandate That SEI Teachers Expediently Complete Adequate SEI Training.

The first prong of the Castafieda standard obligates school districts to adopt an ELL program that is informed by a sound educational theory. Castafieda, 648 F.2d at 1009. When Question 2 was enacted, Massachusetts adopted the SEI program model. See 2010 Report at 1. The theory underlying this model is that ELL students can acquire English language proficiency if they receive (1) effective English language acquisition instruction in an ESL or ELD class, and (2) content instruction that is sheltered so as to be accessible to students who are not yet proficient in English. Id. at 2. Thus the SEI model is theoretically sound only if it accounts for – and accommodates – the challenges faced by a student who must learn academic content in an unfamiliar language.

The second prong of Castafieda requires the “practices, resources, and personnel necessary to transform the theory [underlying the ELL program] into reality.” Castafieda, 648 F.2d at 1009. As Castafieda recognizes: “[Q]ualified teachers are a critical component of the success of a language remediation program.” Id. at 1012-13. MADESE itself has asserted that “[i]n order for an educator to be *qualified* to teach sheltered content and prepared for an English language learner to enter his or her classroom, each educator must complete all four categories.” 2010 Report at 11 (emphasis added). It follows from MADESE's own assertions regarding the importance of category training that an SEI program cannot be implemented effectively absent sufficient numbers of teachers who are adequately trained to shelter content instruction for ELL students.

Assuming for the sake of argument that it was reasonable at the outset for MADESE to choose not to mandate the category training in June 2004, MADESE can no longer claim to be implementing an SEI Program model consistent with EEOA requirements if the voluntary professional development program has resulted in a significant shortage of SEI teachers trained to educate ELL children in content classes seven years later. Indeed, MADESE's data indicates that 68% of teachers in Massachusetts have not even started the category training under the State's current voluntary regime. See supra at 2, 5 (citing the State of the State at 15).

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Accordingly, it is no longer reasonable for MADESE and school districts to regard SEI training as a voluntary activity. The third prong of Castañeda compels states and school districts to periodically evaluate their ELL program to determine if it is empowering students to overcome language barriers. See Castañeda, 648 F.2d at 1010. MADESE's own monitoring over time has shown that a voluntary system for administering SEI training is insufficient to ensure that ELL students will receive content instruction from a teacher trained to shelter content, a crucial pillar of MADESE's SEI program model.

As noted earlier, of the two primary components of the Commonwealth's SEI program – ESL instruction delivered by a properly trained teacher and SEI instruction delivered by a properly trained teacher – only the former is mandated by MADESE. From a compliance perspective, it is difficult to understand MADESE's discrepant approach to enforcing training requirements for ESL and SEI instructors. This discrepancy likely explains, at least in part, why 125 of the 275 districts that MADESE identified as lacking qualified instructors had qualified ESL teachers but lacked qualified SEI teachers. See Dec. 23, 2010 Letter, at List of Districts with Findings.

For all of the above reasons, the time has come for MADESE to fulfill its EEOA obligations by mandating that all SEI teachers complete the training needed to shelter content instruction appropriately so that the State can implement its SEI program model effectively.

B. MADESE Must Ensure That The Content Of The Category Training Adequately Prepares Teachers To Shelter Content Instruction To ELL Students.

A school district's language program does not comply with the EEOA unless it ensures – theoretically and practically – that the teachers who deliver instruction to ELL students can effectively communicate with students who lack English proficiency. In Castañeda, the Fifth Circuit found an EEOA violation where the State's 100-hour course designed to prepare teachers to teach ELL students in the district's Spanish bilingual program failed to instill Spanish-language proficiency:

A bilingual education program, however sound in theory, is clearly unlikely to have a significant impact on the language barriers confronting limited English speaking school children, if the teachers charged with day-to-day responsibility for educating these children are termed "qualified" despite the fact that they operate in the classroom under their own unremedied language disability.

648 F.2d at 1013.

Similarly in Keyes, the school district had a policy that permitted teachers to be assigned to bilingual schools (or removed from those schools) without regard to the teacher's second-language skills or ESL training. See Keyes, 576 F. Supp. at 1517 ("The ESL component of the program is being delivered by ESL designated instructors who have not been subjected to any standardized testing for their language skills and they receive very little training in ESL theory

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and methodology.”). In light of this and other deficiencies in the district’s language acquisition program, see id. at 1517-18, the court concluded that “[i]n summary, what is shown by this record is that the defendant district has failed, in varying degrees, to satisfy the requirements of section 1703(f) of the Equal Educational Opportunities Act.” Id. at 1518.

Here, Massachusetts has replaced its bilingual language acquisition program with a sheltered English immersion model. In a bilingual program teacher-student communication occurs in the student’s native language; hence teachers must have the ability to communicate in that language. See Castañeda, 648 F.2d at 1013; Keyes, 576 F. Supp. at 1517-18. In an SEI program teacher-student communication primarily occurs in English; hence SEI teachers must be facile with the skills and techniques that enable students still learning English to comprehend and converse with their instructors.

MADESE relies on its category training to develop these skills and techniques. However, as noted above, there are deficiencies in the category training that require updating and revising. See supra at Section I.D. As a result, teachers who have completed the category training remain inadequately prepared to deliver the SEI model appropriately. [REDACTED]

To ensure the appropriate implementation of the SEI program, there must be a meaningful evaluation of whether the teachers tasked with delivering the program are qualified to do so. See, e.g., Castañeda, 648 F.2d 989, 1013 (remanding for the lower court to “require both [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”); Rios v. Read, 480 F. Supp. 14, 18, 24-25 (E.D.N.Y. 1978) (district’s bilingual program violated the EEOA due to, inter alia, its use of principals who do not speak Spanish and lack training in bilingual teaching methods to evaluate bilingual teachers). Thus, administrators responsible for evaluating SEI teachers need some training on the SEI techniques these teachers are expected to use and how to evaluate whether the trained teachers learned these techniques and use them appropriately. [REDACTED]

MADESE appears to recognize that the category training needs updating, and we would like to work collaboratively on developing an adequate SEI training that would then be mandated for all SEI teachers and a related Administrator SEI training that would be mandated for all administrators who evaluate SEI teachers. In mandating an improved SEI training, MADESE will need to set a deadline for completing such training. [REDACTED]

[REDACTED]. This deadline affords MADESE approximately [REDACTED] from the time the United States gave oral notice of the noncompliance outlined in this letter. This is more than ample time to remedy this noncompliance under 20 U.S.C. § 1710, especially given that the SEI training to be mandated is not being developed from scratch but rather can build on

REDACTED

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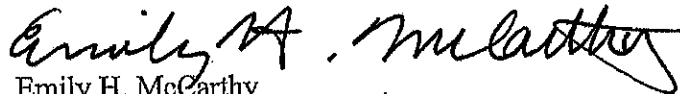
MADESE's seven years of experience with the category training, its already piloted administrator training, and the WestEd study of the category training to be released next month.

[REDACTED]

As we stated at the outset, we are confident that we can work together to ensure that ELL students receive appropriate SEI instruction as soon as possible through improved and mandated SEI training for their teachers and those who evaluate them. [REDACTED]

[REDACTED], we encourage MADESE to develop an SEI training that sets a model for school districts nationally that use SEI content instruction. We look forward to discussing [REDACTED] and this letter during our call on July 26.

Sincerely,



Emily H. McCarthy

Deputy Chief

Educational Opportunities Section

U.S. Department of Justice, Civil Rights Division