

## CLASS ACTION SETTLEMENT AGREEMENT

### I. INTRODUCTION

This Settlement Agreement (“Agreement”) is entered into by Plaintiffs G.F., by and through her guardian ad litem, Gail F., W.B. and Q.G., individually and on behalf of themselves (collectively, “Named Plaintiffs”) and a class of persons similarly situated (the “Class” and collectively with Named Plaintiffs, “Plaintiffs”) as well as between Contra Costa County (“County” or “Defendant”). Defendant and Plaintiffs shall be referred to jointly as the “Parties.”

### II. PROCEDURAL HISTORY

- A. On or about August 8, 2013, Plaintiffs filed an action in the United States District Court for the Northern District of California against the County, *G.F. et al. v. Contra Costa County et al.*, Case No. C13-3667 MEJ (the “Lawsuit”), alleging violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.* (“ADA”), Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 *et seq.* (“Rehabilitation Act” or “Section 504”), the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1400 *et. seq.* (“IDEA”), California Government Code § 11135 and the California Education Code. Plaintiffs concurrently filed their motion for class certification with their original complaint.
- B. Plaintiffs filed the first amended complaint on December 20, 2013, and, pursuant to court order, re-filed Plaintiffs’ motion for class certification on January 9, 2014. Plaintiffs sought to certify the Class defined as: all youth with disabilities as defined under the ADA and the Rehabilitation Act who are currently detained at or who will be detained at the Contra Costa County Juvenile Hall (“Juvenile Hall”).
- C. The County filed a motion to dismiss the first amended complaint on January 24, 2014.
- D. All motions were pending before Magistrate Judge Maria-Elena James in the United States District Court in the Northern District of California (the “District Court”) for more than a year and on March 20, 2015, the District Court terminated these motions for statistical purposes only.

### III. NATURE AND EFFECT OF SETTLEMENT

#### A. Settlement Purpose and Scope

1. The Parties have the mutual goal of settling this action to avoid additional protracted and expensive litigation.
2. The Parties now wish to effectuate a complete resolution and settlement of all claims, disputes, and controversies relating to Plaintiffs’ allegations, and to resolve their differences and disputes by settling the Lawsuit.

3. Plaintiffs believe that a resolution of their claims, as set forth in this Agreement, accomplishes the goals reasonably achievable through litigation of their claims.

4. To that end, upon the date of Final Approval by the District Court of this Agreement (“Effective Date”), the Parties will jointly request dismissal of the County from the above referenced action. The Court will retain jurisdiction over the litigation only as set forth in Section VIII of this Agreement. Any motions filed as to the Contra Costa County Office of Education (“CCCOE”) are not covered or affected by this Agreement.

**B. Settlement on a Class Basis**

The Parties hereby stipulate to certification of the Class as set forth below in Section V(B). The Parties agree to joint briefing regarding this stipulated certification of the Class as outlined in Section V of this Agreement.

**C. No Admission of Liability.**

By agreeing to and voluntarily entering into this Agreement, the County makes no concession or admission, direct or indirect, express or implied, that the County, its governing body, employees or agents, have violated any federal or state law or regulation, including the ADA, the Rehabilitation Act, IDEA, or applicable California state laws, and the County expressly denies all such claims.

**D. Exhibits**

The terms of all Exhibits attached hereto are fully incorporated into this Agreement and are an integral part thereof. The terms of this Agreement, where applicable, are fully incorporated into all Exhibits and are, where applicable, an integral part thereof. To the extent that there are any conflicts or inconsistencies between the terms of this Agreement and any of the Exhibits, the terms of this Agreement shall control.

The Exhibits to this Agreement are:

Exhibit A - Proposed Order Granting Motion for Preliminary Approval of Class Settlement; Certifying Settlement Class; Directing Issuance of Settlement Notice; and Scheduling of Hearing on Final Approval; and

Exhibit B - Notice of the proposed Agreement.

#### IV. SETTLEMENT RELIEF

##### A. Expert Review

##### 1. Topics for Expert Review

The County will retain Professor Barry Krisberg to review the following policies and practices of the Contra Costa County Probation Department (“Probation” or “Probation Department”):

- a. Room confinement policies and practices at the Juvenile Hall.
- b. Policies and practices relating to the use of behavior incentives at the Juvenile Hall.
- c. Policies and practices relating to coordination between CCCOE and the Probation Department, including but not limited to policies and practices relating to the County’s coordination with CCCOE on CCCOE’s implementation of Individualized Education Plans (“IEPs”), 504 Plans, and behavior intervention plans.
- d. Policies and practices relating to the identification, assessment and tracking of youth with disabilities who are detained at Juvenile Hall and referral systems to identify these youth for CCCOE and Contra Costa County Mental Health (“County Mental Health”).
- e. Policies and practices used to implement Juvenile Detention Alternatives Initiative (“JDAI”) standard V.D.4., which specifies that disability must be considered in determining an appropriate response when assigning consequences. The Parties acknowledge that under the new behavior management system, the response to specific conduct, which is disability-related, may or may not be the same as the response to that conduct or similar conduct, which is not disability-related. The Parties also acknowledge that the appropriate response will be based on the individual circumstances in each case.

##### 2. Process for Review

Professor Krisberg will work with Professor Edward Latessa (the “Experts”) to perform a review of the above topics. Following such review, their joint recommendations will be submitted to the County and the County will implement those joint recommendations. A copy of the joint recommendations will also be provided to Disability Rights Advocates and Public Counsel (collectively “Plaintiffs’ Counsel”). To the extent Professors Krisberg and Latessa disagree, the following dispute resolution process shall apply and be final:

- a. Upon notification of a dispute between the Experts, *see* Section IV.E *infra*, the Parties shall meet and confer within 30 days and attempt in good faith to resolve the dispute.

- b. If the Parties are unable to resolve the dispute through the meet and confer process, either Party may submit the matter to Magistrate Judge Joseph C. Spero for purposes of mediation.
- c. If the Parties are unable to resolve the dispute through mediation, they shall submit the matter to Magistrate Judge Maria-Elena James (Judge James) in the form of letter briefs for decision. The Parties agree that in resolving any dispute, Judge James will rely solely on applicable federal and state law and not the terms of this Agreement. This includes, but is not limited to, the ADA, Section 504, California Government Code § 11135, and the IDEA, as applicable.
- d. Either party may appeal Judge James' decision to the Ninth Circuit.
- e. The District Court, in its discretion, may award fees to the prevailing party in accordance with the standard set forth in *Christianberg Garment Co. v. E.E.O.C.*, 434 U.S. 412 (1978). If Plaintiffs are the prevailing party, the Court may, in its discretion, reduce the amount of attorneys' fees and costs awarded if it determines that the County's position(s) were reasonable, in whole or in part.

**B. Multi-Disciplinary Teams**

Multi-disciplinary team meetings between County and CCCOE representatives, including representatives from Probation, CCCOE, and County Mental Health, should be held at least once per month with additional meetings as needed. Such meetings will address the following topics although additional topics may be addressed as needed:

- 1. Coordination of a response and intervention for individual youth who are having consistent and/or chronic issues conforming their behavior to expectations, regardless of where or when the behavior occurs;
- 2. Coordination of the provision of special education and counseling services to all eligible youth on all units;
- 3. Discussion of a continuum of placements based on the special education needs of youth in Juvenile Hall, including a process for approving and placing children in non-public schools and residential placements outside of Juvenile Hall.

**C. Attendance at IEP Meetings**

A Probation staff member will attend IEP meetings when requested to do so by CCCOE and/or the education rights holder where:

- 1. Any one of the following conditions is met:
  - a. The youth has been removed from the classroom or prevented from attending Mt. McKinley School for more than 9 school days in one school year for disciplinary reasons by the Probation Department and/or CCCOE

in response to conduct by the youth. For purposes of determining the number of missed school days, removal or preventions for one school block or less shall not be considered; or

- b. Where a youth has been detained in Juvenile Hall for 30 consecutive days or more and a special day class, residential treatment, or a non-public school placement is being recommended or requested as a placement option by CCCOE or the education rights holder for the youth; or
- c. For youth assigned to the Youthful Offender Treatment Program or the Girls in Motion program or youth who have been detained in Juvenile Hall for 60 consecutive days or more, where a behavior support/intervention plan is being put in place; and

2. The Probation Department has received prior written or oral consent for the attendance of the Probation Department staff member from the education rights holder at least 48 hours in advance of the IEP meeting. If oral consent has been provided, the education rights holder will provide written consent immediately prior to the IEP meeting.

Plaintiffs agree that Probation's participation and attendance at such IEP meetings does not create any obligations or responsibilities under the IDEA and related state laws. Probation will not sign any IEPs nor provide any services as part of any IEP but will allow CCCOE to indicate that a member of the Probation Department was present and the name of the particular representative(s) of the Probation Department who attended.

#### **D. Room Confinement**

The Probation Department will adopt the following standards:

1. Room Confinement will be defined as the involuntary restriction of a youth alone in his or her room in response to the youth's behavior or conduct. A youth shall be considered "alone" for purposes of paragraph 3 below even where there are sporadic short visits or check-ins on such youths.

2. Staff shall not use room confinement for discipline, punishment, administrative convenience, retaliation, staffing shortages, or reasons other than a temporary response to behavior that threatens immediate harm to the youth or others as provided in paragraphs 3-5 of this section.

3. Staff shall not place youth in continuous room confinement for longer than four hours except as provided herein and in paragraph 5 below. After four continuous hours, staff shall return the youth to the general population, develop special individualized programming for the youth, or consult with a qualified mental health professional about whether a youth's behavior requires that he or she be transported to a mental health facility. For implementation purposes, sporadic short visits or check-ins do not extend the four hour cap.

4. Staff will develop special individualized programming for youth with persistent behavior problems that threaten the safety of youth or staff or the security of

the facility. Staff shall not use room confinement as a substitute for special individualized programming. Special individualized programming includes the following:

- a. Development of an individualized plan designed to improve the youth's behavior, created in consultation with the youth, County Mental Health staff, and the youth's family members, when available.
- b. The plan identifies the causes and purposes of the negative behavior, as well as concrete goals that the youth understands and that he or she can work toward to be removed from special programming.
- c. In-person supervision by and interaction with staff members.
- d. In-person provision of educational services.
- e. Involvement of the youth in other aspects of the facility's programming unless such involvement threatens the safety of youth or staff or the security of the facility.
- f. A guarantee that the youth will not be denied any of his or her basic rights.
- g. Daily review with the youth of his or her progress toward the goals outlined in his or her plan.

5. As part of the review outlined in Section IV.A above, the Experts will consider whether and under what conditions it would be appropriate for the youth to remain in room confinement as part of special individualized programming after the initial four hour period referenced in paragraph 3 above.

**E. Implementation and Monitoring Period**

The Experts will perform their review as set forth in Section IV.A above and issue their report within six months of the Effective Date. This report shall set forth all jointly agreed-upon recommendations and all disputes between the Experts. The County will implement all jointly agreed-upon recommendations/policies over the first year and a half after the Effective Date and will be held to compliance with the terms of the Agreement as set out herein. The initial year and a half year following the Effective Date will be called the "Implementation Period."

Following this Implementation Period, there will be a two year Monitoring Period. This two-year Monitoring Period will not include time spent in dispute resolution following the issuance of the Experts' report. During the Monitoring Period, the Experts will provide reports every 6 months to Plaintiffs' Counsel and the County with the first report provided on the first day of the Monitoring Period, subsequent reports provided every six months thereafter, and the final report at the conclusion of the Monitoring Period ("Monitoring Report(s)"). Probation will provide the Experts with access to items deemed necessary by the Experts to prepare the Monitoring Reports. The Monitoring Reports prepared by the Experts shall include each of the metrics listed below:

- 1) Instances of the use of continuous room confinement in Juvenile Hall for periods of three hours or more, including the reason the youth was placed in room confinement, the duration of room confinement, any and all general education and/or special education

provided to such youth, and any special individualized programming developed for the youth;

- 2) The total number of IEP meetings for youth in Juvenile Hall attended by Probation Department staff, including the name of the youth, the name of staff attending, and the reasons for Probation Department staff attendance;
- 3) The total number of youth in Juvenile Hall having consistent and/or chronic issues conforming their behavior to expectations who were discussed at the Multi-Disciplinary Team meetings, including the reason for the discussion and who was present at the meeting;
- 4) The total number and names of Juvenile Hall units employing the new behavioral management system;
- 5) The total number of youth detained in Juvenile Hall referred by Probation Department staff to (a) CCCOE for a determination respecting the youth's eligibility to receive special education under the IDEA and/or state law and/or (b) County Mental Health for mental health counseling services;
- 6) A summary of any discussions between CCCOE and the Probation Department occurring during the relevant six month period with respect to coordination of the provision of special education programs and services at Juvenile Hall by CCCOE;
- 7) The total number of grievances and/or complaints filed by youth in Juvenile Hall respecting room confinement and/or disciplinary actions;
- 8) The total number of youth receiving special individualized programming as outlined in subsection IV.D.4 and the types of such programming provided;
- 9) The total number of youth in Juvenile Hall denied access to recreational services by the Probation Department as the result of disciplinary actions, including a breakdown of the number of youth denied access to recreational services by type; and
- 10) The total number of youth in Juvenile Hall denied access to educational services in the classroom environment as a result of disciplinary actions, including the number of days each youth was not able to attend class and the reasons for such non-attendance.

The Probation Department agrees to make the underlying documents available upon request to the Experts and Plaintiffs' Counsel. The Experts' reports and underlying documents contain confidential information, including but not limited to confidential information pertaining to Class members and other juveniles. The Experts and Plaintiffs' Counsel shall keep such information confidential and shall not use such information for purposes other than implementation and enforcement of this Agreement unless that information was also obtained by the entity seeking to use that information through independent means.

The Parties recognize that implementation of the substantive provisions of the Agreement will be difficult and therefore will rely on benchmarks to show compliance with this Agreement during the initial phase of the Monitoring Period as set forth below. The benchmark for the compliance with the Agreement at the time of the first and second Monitoring Report will be 70% compliance. The benchmark for the next year of the Monitoring Period, during which the Experts will provide their third and fourth Monitoring Reports, will be 80% compliance. Thereafter and through the conclusion of the Monitoring Period, including the issuance of the fifth and final Monitoring Report, all units shall be in substantial compliance with the provisions of this Agreement.

The County will pay the Experts reasonable fees for monitoring work, not to exceed a combined total of \$25,000 for the Monitoring Period. The County will not pay Plaintiffs' Counsel their attorneys' fees and costs for work performed during the Monitoring Period in conjunction with monitoring of this Agreement.

Should there be a dispute between the Parties respecting compliance with this Agreement during the Monitoring Period, the Parties will use the dispute resolution process set forth in Section IV.A.2 (Process for Review) above, subject to the limitations set forth in that provision respecting recovery of attorneys' fees and costs by the prevailing party. Either party has up to thirty days after issuance of a Monitoring Report to notify the other party of any disputes respecting compliance during the time period reflected in that Report.

## **V. PROCEDURE FOR CLASS-WIDE SETTLEMENT**

### **A. District Court Approval.**

This Agreement shall be subject to District Court approval. However, nothing in this Agreement shall be deemed to authorize the District Court to change or vary any of its terms.

### **B. Certification of the Settlement Class**

The Parties hereby stipulate to certification of the Class defined as "all youth with disabilities as defined under the ADA and the Rehabilitation Act who are currently detained at or who will be detained at the Contra Costa County Juvenile Hall." The Parties agree to joint briefing regarding this stipulated certification of the Class as outlined below.

### **C. Preliminary Approval by the District Court of the Settlement Agreement**

The Parties agree that they will cooperate and take all reasonable steps to ensure that this Agreement is approved by the District Court and becomes effective. Specifically, within 45 days after all parties have signed this Agreement, the Parties shall (1) jointly file the Agreement, including the attached Exhibits, with the District Court, (2) jointly move for Preliminary Approval of this Agreement in the District Court, and (3) request entry by the District Court on the earliest date acceptable to the Court of the Proposed Order Granting Motion for Preliminary Approval of Class Settlement; Certifying Settlement Class; Directing Issuance of Settlement Notice; and Scheduling of Hearing on Final Approval, attached as **Exhibit A**.

### **D. Class Action Fairness Act ("CAFA").**

Within ten days of the date that this Agreement is filed in the District Court for Preliminary Approval, Defendant will provide the Notice of this Settlement Agreement as required by the Class Action Fairness Act (28 U.S.C. § 1715(b)) to the U.S. Attorney General, the California Attorney General's Office, and/or any other necessary parties.

E. **Fairness Hearing**

The Parties shall jointly request that the District Court schedule and conduct a Fairness Hearing to address the fairness of this Agreement settling Plaintiffs' claims against Defendant and to decide whether there shall be Final Approval of the settlement embodied in this Agreement. At the Fairness Hearing, the Parties shall jointly move for and recommend certification of the Class and Final Approval of this Agreement. The Fairness Hearing shall take place at on a date allowing for such period of Notice to the Class as the District Court may direct, and in accordance with 28 U.S.C. § 1715.

F. **Notice**

The Parties jointly request that the Court approve Notice of the proposed Agreement ("Notice") to be provided to the Class as follows: within 30 days after Preliminary Approval, the Parties shall distribute Notice of the proposed Agreement as set forth in the District Court's Preliminary Approval Order. Unless the District Court orders otherwise, this Notice, attached as **Exhibit B**, shall be published as follows:

- a. The Notice includes: A brief statement of the claims released by the Class; the date of the hearing on the Final Approval of the Agreement; the deadline for submitting objections to the Agreement; the web page, address, and phone and fax numbers that may be used to obtain a copy of the Notice in the format and language requested.
- b. Plaintiffs' counsel and Defendant shall each post in a prominent place on their respective websites a copy of the Notice and the proposed Agreement until the deadline for submitting objections has passed. Following Final Approval, Plaintiffs' counsel and Defendant shall each post a copy of the final Agreement on their respective websites.
- c. Defendant shall also post the Notice in the visitor areas, in a prominent place on each unit, and in the entrance lobby of the Juvenile Hall until the deadline for submitting objections has passed. Defendant shall also mail the Notice to the Contra Costa County Juvenile Court Judges, the Contra Costa County Public Defender's Office, and the Contra Costa County District Attorney's Office.
- d. Nothing in this Agreement shall bar the Parties from further distribution of the Notice at their own expense.
- e. The County will bear costs of notifying the putative class members as directed by the Court.
- f. At least fourteen (14) days before the Fairness Hearing, Counsel for Defendants and Plaintiffs' Counsel will provide a declaration to the District Court attesting that they each disseminated notice consistent with this Agreement.

## **VI. RELEASE OF CLAIMS**

Subject to the District Court's retention of jurisdiction, Named Plaintiffs and the Class, in consideration of the relief set forth herein, the sufficiency of which is expressly acknowledged, do fully and finally release, acquit, and discharge Defendant, including but not limited to its Board of Supervisors, departments, officials, officers, agents, attorneys, insurers, employees, and any other person or persons for whose actions or omissions Contra Costa County may be legally responsible, from claims regarding the Juvenile Hall as set forth below.

The "Released Injunctive Claims" are any and all claims rights, demands, charges, complaints, actions, suits, and causes of action, whether known or unknown, suspected or unsuspected, accrued or unaccrued, for injunctive or declaratory relief that have been brought in this lawsuit under the IDEA, Section 504, the ADA, California Government Code § 11135 and/or the California Education Code arising on or before August 8, 2013, through the Term of the Agreement, as defined below. The Released Injunctive Claims do not include any claims for compensatory education or individual due process claims arising under the IDEA, California Government Code § 11135 and the California Education Code, any claims related to physical access, communication access, and/or accommodations otherwise relating to hearing, vision and/or mobility disabilities arising under the ADA or Section 504, or any monetary claims that may exist under any relevant laws.

In addition to the Released Injunctive Claims, Named Plaintiff G.F, by and through her guardian ad litem, Gail F., releases any and all claims whether known or unknown, suspected or unsuspected, accrued or unaccrued, for monetary relief under the IDEA, Section 504, the ADA, California Government Code § 11135 and/or the California Education Code arising on or before August 8, 2013, through the term of this Agreement. Named Plaintiff G. F., by and through her guardian ad litem, Gail F., further releases any and all claims whether known or unknown, suspected or unsuspected, accrued or unaccrued, for compensatory education or individual due process under the IDEA, California Government Code § 11135 and/or the California Education Code arising on or before August 8, 2103 through December 27, 2013. Compensatory education and due process claims for Named Plaintiff G.F. after December 27, 2013 are not released.

In addition to the Released Injunctive Claims, Named Plaintiff Q.G., further releases any and all claims whether known or unknown, suspected or unsuspected, accrued or unaccrued, for compensatory education or individual due process under the IDEA, California Government Code § 11135 and/or the California Education Code arising on or before August 8, 2103 through the Term of the Agreement. Monetary relief claims under the IDEA, Section 504, the ADA, California Government Code § 11135, and the California Education Code for Named Plaintiff Q.G. are not released.

In addition to the Released Injunctive Claims, Named Plaintiff W.B., releases any and all claims whether known or unknown, suspected or unsuspected, accrued or unaccrued, for compensatory education or individual due process under the IDEA, California Government Code § 11135 and/or the California Education Code arising on or before August 8, 2103 through the Term of the Agreement. Monetary relief claims under the IDEA, Section 504, the ADA, California Government Code § 11135 and the California Education Code for Named Plaintiff W.B. are not released.

The Named Plaintiffs agree not to retain Disability Rights Advocates and Public Counsel to pursue any individual claims against the County, or any of its employees or departments through the Term of the Agreement.

## **VII. DISMISSAL OF THE LAWSUITS**

Upon Final Approval of the Agreement, the District Court shall enter final judgment under Rule 54(b) of the Federal Rules of Civil Procedure dismissing this lawsuit with prejudice subject to the District Court's retention of jurisdiction as detailed in Section VIII, below. Further, the County and all three Named Plaintiffs will dismiss their pending due process appeals in *Contra Costa County v. Barbara C.*, Civil Case No. C14-00268 MEJ, *Contra Costa County v. CiCi C.*, Civil Case No. C14-00269 MEJ, and *Contra Costa County v. Gail F.*, Civil Case No. C14-00270 MEJ, with prejudice. Named Plaintiff W.B., does not waive the provision of the seventeen (17) hours of compensatory education by the County as required by Administrative Law Judge Peter Paul Castillo in his underlying administrative decision. Named Plaintiff Q.G. does not waive the provision of the one (1) hour of compensatory education by the County required by Administrative Law Judge Peter Paul Castillo in his underlying administrative decision. Named Plaintiff G.F., through her guardian, Gail F., does not waive the provision of the twenty (20) hours of compensatory education by the County as required by Administrative Law Judge Peter Paul Castillo in his underlying administrative decision. The County will provide Named Plaintiff W.B., Named Plaintiff Q.G., and Named Plaintiff G.F. with compensation for the compensatory education ordered at the rate of \$30 per hour.

## **VIII. RETENTION OF DISTRICT COURT JURISDICTION**

The District Court will retain jurisdiction for purposes of approval and enforcement of any award of attorneys' fees and costs. The District Court will also retain jurisdiction over this matter for purposes of enforcement and for purposes of dispute resolution, including disputes related to the final Monitoring Report and for purposes of awarding attorneys' fees and costs related to dispute resolution.

## **IX. ATTORNEYS' FEES AND COSTS**

Named Plaintiffs and their counsel, including Disability Rights Advocates, Public Counsel, Zelle Hofmann Voelbel & Gette LLP and Paul Hastings LLP, maintain a claim for attorneys' fees and costs in connection with the Lawsuit which the Parties have negotiated for purposes of settlement. Named Plaintiffs and their counsel also maintain claims for attorneys' fees and costs in connection with *Contra Costa County v. Barbara C.*, Civil Case No. C14-00268 MEJ, *Contra Costa County v. CiCi C.*, Civil Case No. C14-00269 MEJ, and *Contra Costa County v. Gail F.*, Civil Case No. C14-00270 MEJ, including the underlying administrative proceedings in each of these three cases (collectively "IDEA Due Process Appeals").

The County shall pay Plaintiffs' attorneys' fees and costs in the amount of One Million, Three Hundred, and Forty Thousand Dollars (\$1,340,000) as full and final settlement of all attorneys' fees and costs in this lawsuit and the IDEA Due Process Appeals. As set forth above in Sections

IV.A.2 and IV.E, Plaintiffs may seek future attorneys' fees by motion to the District Court in connection with any future disputes between the parties.

Payment of attorneys' fees and costs by the County shall be made within 60 days of the District Court's issuance of Final Approval of this Agreement. Payment shall be made payable to Disability Rights Advocates and shall be delivered to 2001 Center Street, Berkley, California 94704 for appropriate distribution.

## **X. OTHER MATTERS**

### **A. Term of Agreement**

This Agreement shall remain in effect from the Effective Date until the completion of the Monitoring Period, which shall be the date of the issuance of the final Monitoring Report ("Term of the Agreement").

### **B. Entire Agreement**

This Agreement contains all the agreements, conditions, promises, and covenants between Plaintiffs and Defendant regarding matters set forth in it, and supersedes all prior or contemporaneous agreements, drafts, representations, or understandings, either written or oral.

### **C. Modification**

This Agreement can only be amended by written agreement of the Parties. Following Final Approval of the Agreement by the District Court, no modification of this Agreement shall be effective unless it is made pursuant to court order.

### **D. Drafting of this Agreement**

This Agreement is deemed to have been drafted by all Parties hereto, as a result of arm's length negotiations among the Parties. Whereas all Parties have contributed to the preparation of this Agreement, it shall not be construed more strictly against one Party than another.

### **E. Execution by Facsimile and in Counterparts**

This Agreement may be executed by the Parties hereto in separate counterparts, and all such counterparts taken together shall be deemed to constitute one and the same agreement.

### **F. Interpretation**

The language of this Agreement shall be construed as a whole according to its fair meaning, and not strictly for or against any of the Parties. The headings in this Agreement are solely for convenience and shall not be considered in its interpretation. Where required by context, the plural includes the singular and the singular includes the plural. This Agreement is the product of negotiations and joint drafting so that any ambiguity shall not be construed against any Party.

**G. Additional Documents**

To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

**H. Authority to Bind**

The undersigned each represents and warrants that: a) he/she is authorized to sign on behalf of, and to bind, the respective Parties of this Agreement; b) there has been no assignment, transfer, conveyance or other disposition of any of the released claims set forth in Section VI above by the Party he/she is signing on behalf of; c) the Party he/she is signing on behalf of is fully entitled to give a full and complete release of all released claims set forth in Section VI above; and d) he/she is represented by counsel, has been so represented throughout all negotiations and the drafting of this Agreement, has read and understands the terms of this Agreement and had the terms of this Agreement explained fully by counsel.

WHEREFORE, the undersigned acknowledge and agree to be bound by the terms of the Agreement.

**Plaintiffs:**

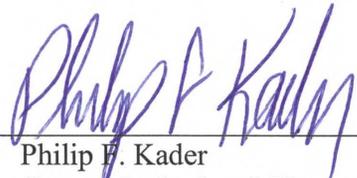
**“W.B.”, signed on his behalf by “CiCi C”**

\_\_\_\_\_

Date: \_\_\_\_\_

**Defendant:**

**Contra Costa County**

By:  \_\_\_\_\_  
Philip F. Kader

Title: County Probation Officer

Date: May 8, 2015

**“Q.G”**

\_\_\_\_\_

Date: \_\_\_\_\_

**“Gail F”, guardian ad litem for G.F.**

\_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM AND CONTENT:**

Attorneys for Plaintiffs:  
W.B., Q.G., and Gail F,  
Guardian ad litem for G.F.

By: \_\_\_\_\_  
Mary Lee K. Smith, Esq.  
Disability Rights Advocates

By: \_\_\_\_\_  
Laura Faer, Esq.  
Public Counsel

Attorney for Defendant:  
Contra Costa County

By:  \_\_\_\_\_  
D. Cameron Baker, Esq.  
Contra Costa County Office of the  
County Counsel

G. Additional Documents

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WHEREFORE, the undersigned acknowledge and agree to be bound by the terms of the Agreement.

Plaintiffs:

“W.B.”, signed on his behalf by “CiCi C”

CiCi C

Date: 4-30-2015

Defendant:

Contra Costa County

By: \_\_\_\_\_

Philip F. Kader

Title: County Probation Officer

Date: \_\_\_\_\_

“Q.G”

\_\_\_\_\_

Date: \_\_\_\_\_

“Gail F”, guardian ad litem for G.F.

\_\_\_\_\_

Date: \_\_\_\_\_

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WHEREFORE, the undersigned acknowledge and agree to be bound by the terms of the Agreement.

**Plaintiffs:**

**“W.B.”, signed on  
his behalf by “CiCi C”**

\_\_\_\_\_

Date: \_\_\_\_\_

**Defendant:**

**Contra Costa County**

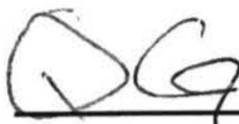
By: \_\_\_\_\_

Philip F. Kader

Title: County Probation Officer

Date: \_\_\_\_\_

**“Q.G”**

 \_\_\_\_\_

Date: 5-19-15

**“Gail F”, guardian ad litem for G.F.**

\_\_\_\_\_

Date: \_\_\_\_\_

**G. Additional Documents**

To the extent any documents are required to be executed by any of the Parties to effectuate this Agreement, each party hereto agrees to execute and deliver such and further documents as may be required to carry out the terms of this Agreement.

**H. Authority to Bind**

The undersigned each represents and warrants that: a) he/she is authorized to sign on behalf of, and to bind, the respective Parties of this Agreement; b) there has been no assignment, transfer, conveyance or other disposition of any of the released claims set forth in Section VI above by the Party he/she is signing on behalf of; c) the Party he/she is signing on behalf of is fully entitled to give a full and complete release of all released claims set forth in Section VI above; and d) he/she is represented by counsel, has been so represented throughout all negotiations and the drafting of this Agreement, has read and understands the terms of this Agreement and had the terms of this Agreement explained fully by counsel.

WHEREFORE, the undersigned acknowledge and agree to be bound by the terms of the Agreement.

**Plaintiffs:**

**“W.B.”, signed on his behalf by “CiCi C”**

\_\_\_\_\_

Date: \_\_\_\_\_

**Defendant:**

**Contra Costa County**

By: \_\_\_\_\_

Philip F. Kader

Title: County Probation Officer

Date: \_\_\_\_\_

**“Q.G”**

\_\_\_\_\_

Date: \_\_\_\_\_

**“Gail F”, guardian ad litem for G.F.**

*Gail F*  
\_\_\_\_\_

Date: *4/30/15*

# EXHIBIT A

1 SIDNEY M. WOLINSKY (CA BAR NO. 33716) (swolinsky@dralegal.org)

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Facsimile: (415) 693-0770

15 *Attorneys for Plaintiffs*

17 **UNITED STATES DISTRICT COURT**  
18 **NORTHERN DISTRICT OF CALIFORNIA**

19 G.F., by and through her guardian ad litem,  
20 Gail F.; W.B., by and through his guardian ad  
21 litem, CiCi C.; Q.G., by and through his  
22 guardian ad litem, Barbara C.; and on behalf of  
themselves and a class of those similarly  
situated,

23 Plaintiffs,

24 v.

25 CONTRA COSTA COUNTY; CONTRA  
26 COSTA COUNTY OFFICE OF  
EDUCATION,

27 Defendants.

**Case No. C-13-03667 MEJ**

**CLASS ACTION**

**(PROPOSED) ORDER GRANTING  
MOTION FOR PRELIMINARY  
APPROVAL OF CLASS SETTLEMENTS;  
CERTIFYING SETTLEMENT CLASS;  
DIRECTING ISSUANCE OF  
SETTLEMENT NOTICE; AND  
SCHEDULING OF HEARING ON FINAL  
APPROVAL**

1           WHEREAS, Plaintiffs G.F., by and through her guardian ad litem, Gail F., W.B. and  
2 Q.G., Defendant Contra County Office of Education, and Defendant Contra Costa County  
3 (collectively the “Parties”) have advised the Court that they have settled the above-captioned  
4 litigation (hereafter “Litigation”), the terms of which have been memorialized in two settlement  
5 agreements, an agreement with the Contra Costa County Office of Education (“CCCOE”)  
6 (hereafter “CCCOE Agreement”) and a separate agreement with Defendant Contra Costa County  
7 (“County”) (hereafter “County Agreement”) (and collectively, the “Settlement Agreements”).  
8 The CCCOE Agreement is attached to the Joint Motion for Preliminary Approval of the  
9 Settlement Agreement as **Exhibit A** and the County Agreement is attached as **Exhibit B**;

10           WHEREAS, the Parties have applied to this Court through a joint motion for an order  
11 (1) certifying the proposed class for settlement purposes only (hereafter “Settlement Class”),  
12 (2) granting preliminary approval of the Settlement Agreements, which resolve all claims in the  
13 Litigation, (3) directing notice to the Settlement Class, and (4) setting a Fairness Hearing; and

14           WHEREAS, the Court has read and considered the Joint Motion for Preliminary  
15 Approval of the Settlement Agreements, the points and authorities and declarations submitted  
16 therewith, the proposed Settlement Agreements, and all of the supporting documents; and good  
17 cause appearing:

18           NOW, THEREFORE, IT IS HEREBY ORDERED:

19           1.       This Order incorporates by reference the definitions in the Settlement Agreements  
20 and all terms defined therein shall have the same meaning in this Order as set forth in the  
21 Settlement Agreements.

22           2.       The Joint Motion for Preliminary Approval of the Agreements (“Joint Motion”) is  
23 granted. All pending pretrial deadlines are hereby vacated. It appears to this Court on a  
24 preliminary basis that the Settlement Agreements are fair, adequate and reasonable. It further  
25 appears that extensive evaluation of the merits has been conducted such that the attorneys for the  
26 Parties are able to reasonably evaluate their respective positions. It also appears to the Court that  
27 settlement at this time will avoid substantial additional costs to all Parties, as well as avoid the

1 delay and the risks presented by further litigation regarding issues addressed by the Settlement  
2 Agreements. It further appears that the Settlement Agreements have been reached as the result  
3 of intensive, prolonged, serious, and non-collusive arms-length negotiations, including multiple  
4 in-person and telephonic settlement sessions.

5 3. The proposed Settlement Class is hereby conditionally certified pursuant to FRCP  
6 23(a) and (b)(2) for purposes of settlement. The Settlement Class is defined as:

7 “all youth with disabilities as defined under the ADA and the  
8 Rehabilitation Act who are currently detained at or who will be  
9 detained at the Contra Costa County Juvenile Hall.”

10 4. Certification of the Settlement Class shall be solely for settlement purposes and  
11 without prejudice in the event that the Settlement Agreements are not finally approved by this  
12 Court or otherwise do not take effect. The conditional certification of the Settlement Class shall  
13 be vacated and shall have no effect in the event that the Settlement Agreements are not finally  
14 approved by this Court or otherwise do not take effect.

15 5. The Court hereby appoints and designates the following as representatives of the  
16 Settlement Class: Named Plaintiffs G.F., by and through her guardian ad litem, Gail F.; W.B.;  
17 and Q.G.

18 6. Notice of the proposed Settlement Agreement shall be given to class members.

19 7. The Court hereby approves the proposed Joint Notice of Proposed Settlement of  
20 Class Action Lawsuit (“Notice”), attached as **Exhibit B** to each of the Settlement Agreements as  
21 to form and content.

22 8. Within 30 days after issuance of this Order, the Parties shall distribute the Notice  
23 advising the Settlement Class of the terms of the proposed Settlement Agreement and their right  
24 to object to the proposed Settlement Agreement. This Notice shall be distributed as follows:

25 a) Notice to be given by Defendant CCCOE:

26 i) Defendant CCCOE shall distribute the Notice to the education rights holders of all  
27 youth currently enrolled at Mt. McKinley, who have an IEP and/or a Section 504 plan.

1 If the youth is over 18 and holds their own education rights, Notice may be given  
2 directly to the youth at the Juvenile Hall. If the youth is under 18 or does not hold  
3 their own education rights then Notice will be mailed to the last known address of the  
4 education rights holder. The outside front of the envelope or mailing surface shall  
5 clearly be printed with the phrase “IMPORTANT SETTLEMENT DOCUMENTS  
6 ENCLOSED” in both English and Spanish. The Notice shall be mailed in a stand-  
7 alone mailing via First Class U.S. Mail. CCCOE may utilize the services of a third-  
8 party vendor who specializes in the service of class action notices to accomplish this  
9 mailing.

10 ii) Plaintiffs’ Counsel and CCCOE shall each post on the front page of their respective  
11 websites a copy of the Notice and the proposed CCCOE Agreement until the deadline  
12 for submitting objections has passed. Following final approval Plaintiffs’ counsel and  
13 CCCOE shall each post a copy of the final CCCOE Agreement on their respective  
14 websites.

15 iii) CCCOE shall also post the Notice in each classroom at the John A. Davis Juvenile  
16 Hall and request that Contra Costa County post the Notice in the entrance lobby of  
17 the John A. Davis Juvenile Hall. The posted Notices shall remain in place until the  
18 deadline for submitting objections to the CCCOE Agreement has passed.

19 iv) Nothing in this Order shall bar either Plaintiffs or CCCOE from further distribution of  
20 the Notice at their own expense.

21 v) CCCOE shall bear all costs for publication of the Notice in a manner agreed upon by  
22 the Parties.

23 b) Notice to be given by Defendant County:

24 i) Plaintiffs’ Counsel and County shall each post their respective websites a copy of the  
25 Notice and the proposed County Agreement until the deadline for submitting  
26 objections has passed. Following final approval, Plaintiffs’ Counsel and the County  
27 shall each post a copy of the final County Agreement on their respective websites.

1           ii) The County shall also post the Notice in the visitor areas, in a prominent place on  
2           each unit, and in the entrance lobby of the John A. Davis Juvenile Hall until the  
3           deadline for submitting objections to the County Agreement has passed. Defendant  
4           shall also mail the Notice to the Contra Costa County Juvenile Court Judges, the  
5           Contra Costa County Public Defender's Office, and the Contra Costa County District  
6           Attorney's Office.

7           iii) Nothing in this Order shall bar either Plaintiffs or the County from further distribution  
8           of the Notice at their own expense.

9           iv) The County shall bear all costs for publication of the Notice in a manner agreed upon  
10          by the Parties except the County shall have no obligations with respect to the posting  
11          of the Notice on Plaintiffs' Counsel's websites.

12          9.       In the event that the Settlement Agreements are not approved by the Court, or  
13 otherwise fail to become effective, neither the Plaintiffs nor any of Plaintiffs' counsel shall have  
14 any obligation to repay the amounts actually and properly disbursed to accomplish such notice  
15 and administration.

16          10.       The Court finds that the forms of notice to the Settlement Class regarding the  
17 proposed Settlement Agreements, including the methods of dissemination to the proposed  
18 Settlement Class in accordance with the terms of this Order, meet the requirements for due  
19 process, the requirements of Rules 23(c)(2) and 23(e) of the Federal Rules of Civil Procedure, to  
20 constitute reasonable, appropriate notice to the class.

21          11.       Any objections by members of the Settlement Class to the proposed Settlement  
22 Agreement shall be heard, and any papers submitted in support of said objection shall be  
23 considered by the Court at the Fairness Hearing only if, on or before seventy-five (75) calendar  
24 days after the issuance of this Order, such objector files with the Class Action Clerk of the  
25 United States District Court for the Northern District of California, 450 Golden Gate Avenue,  
26 San Francisco, CA 94102: (1) a notice of his/her objection and a statement of the basis for such  
27 an objection; and/or (2) if applicable, a statement of his/her intention to appear at the Fairness

1 Hearing. A member of the Settlement Class need not appear at the Fairness Hearing in order for  
2 his/her objection to be considered. Any Settlement Class member who does not make his/her  
3 objection in the manner provided for in this Order shall be deemed to have waived such  
4 objection.

5 12. Plaintiffs shall file their motion for approval of attorneys' fees and costs at least  
6 fourteen (14) days before the deadline for objecting to the Settlement Agreements, as reflected in  
7 paragraph 11.

8 13. No later than fourteen (14) days before the Fairness Hearing described below, the  
9 Parties shall file all papers in support of the Application for Final Approval of the Settlement  
10 Agreements and/or any papers in response to any valid and timely objection submitted to the  
11 Court, and shall serve copies of such papers on each other and upon any objector who has  
12 complied with the provisions of Paragraph 11 of this Order. Counsel for the Parties will also file  
13 with the Court sworn statements evidencing compliance with the notice provisions of this Order.

14 14. A Fairness Hearing shall be held before this Court no less than one hundred (100)  
15 calendar days after the issuance of this Order to determine all necessary matters concerning the  
16 Settlement Agreements, including: whether the proposed Settlement Agreements' terms and  
17 conditions are fair, adequate, and reasonable; whether Plaintiffs' Counsel's attorneys' fees and  
18 reimbursement of expenses should be approved; and whether an order approving the Settlement  
19 Agreements and dismissing the Litigation on the merits and with prejudice against the Named  
20 Plaintiffs and the Settlement Class, subject to the Court retaining jurisdiction to administer and  
21 enforce the Settlement Agreements, should be entered.

22 15. The Fairness Hearing may, from time to time and without further notice to the  
23 Settlement Class (except those who have filed timely objections or entered appearances), be  
24 continued or adjourned by order of the Court.

25 16. Counsel for the Parties are hereby authorized to utilize all reasonable procedures  
26 in connection with the administration of the Settlement Agreements which are not materially  
27 inconsistent with either this Order or the terms of the Settlement Agreements.

1 IT IS SO ORDERED:

2

3 Dated: \_\_\_\_\_

\_\_\_\_\_  
HONORABLE MARIA-ELENA JAMES  
Magistrate Judge of the United States  
District Court Northern District of  
California

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# EXHIBIT B

## **NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION LAWSUIT**

**ATTENTION:** all youth with disabilities as defined under the Americans with Disabilities Act and the Rehabilitation Act who are currently detained at, or who will be detained in the future, at the John A. Davis Juvenile Hall, located in Martinez, California (the “Juvenile Hall”). You may be a member of the proposed settlement class affected by this lawsuit.

**PLEASE READ THIS NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LITIGATION.**

### **NOTICE OF CLASS ACTION**

The purpose of this notice is to inform you of the proposed settlements in a pending class action lawsuit brought on behalf of juveniles with disabilities who are detained, or will be detained in the future, at the Juvenile Hall. The lawsuit, *G.F. v. Contra Costa County*, N.D. Cal. Case No. C-13-03667 MEJ, filed in 2013, alleges that Contra Costa County (“County”), through its Probation Department, and Contra Costa County Office of Education (“CCCOE”) have discriminated against juveniles with disabilities housed at the Juvenile Hall. CCCOE and the County deny any liability or wrongdoing. Separate class action settlements, which must be approved by the Court, have now been reached with both the County (“County Agreement”), and CCCOE (“CCCOE Agreement”) (collectively the “Settlement Agreements”).

### **THE SETTLEMENT CLASS**

If you are a youth with a disability who is currently detained at the John A. Davis Juvenile Hall in Martinez, CA, or who will be detained at the John A. Davis Juvenile Hall, you may be a member of the proposed settlement class affected by this lawsuit and the proposed Settlement Agreements. Please read this notice carefully because your rights may be affected.

## **SUMMARY OF THE PROPOSED SETTLEMENT AGREEMENTS**

### ***CCCOE Agreement***

#### **Expert Review of Educational Policies**

The CCCOE Agreement provides for CCCOE to retain an expert with expertise in (1) the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, *et. seq.* (“IDEA”), (2) the Rehabilitation Act, 29 U.S.C. § 794 *et. seq.* (“Rehabilitation Act”), and the Americans with Disabilities Act, 42 U.S.C. § 12101, *et. seq.* (“ADA”), (3) California state law requirements pertaining to special education, and (4) the operation of juvenile court schools.

The expert will conduct a review of CCCOE’s policies, procedures and practices in the following areas:

- Child Find obligations in accordance with the IDEA and related California law and the Rehabilitation Act related to youth with suspected disabilities who are detained at John A. Davis Juvenile Hall.
- Development and implementation of individualized education plans (“IEPs”) and Section 504 Plans in accordance with the IDEA and related California law and the Rehabilitation Act for all eligible disabled youth detained in John A. Davis Juvenile Hall.

- Discipline in accordance with applicable law for all eligible disabled youth detained in John A. Davis Juvenile Hall.
- The obligations of CCCOE to coordinate with Probation regarding all matters in which CCCOE and Probation have joint or overlapping responsibilities.

In order to conduct this review the expert will be given full and reasonable access to any and all information deemed necessary including at least the following: (1) Full access to the areas in which CCCOE operates; (2) The ability to talk with, consult with, and interview staff from CCCOE; (3) The ability to observe youth in the classroom setting, attend IEP meetings with the consent of the educational rights holder, observe youth during other special education related services, except for individual counseling services, and review recordings of IEP team meetings; (4) Access to CCCOE records with the exception of private personnel files, and (5) The ability to conduct written surveys of youth detained in John A. Davis Juvenile Hall and to speak with small groups of students as needed.

Based on this review the expert will develop a report (“Expert Report”) which shall include all proposed revisions to policies, procedures, and practices that he or she recommends. This report will be completed within six months of the commencement of the expert’s review. Following the issuance of the report both Plaintiffs and Defendant CCCOE will have an opportunity to challenge any recommendation contained in the report on the basis that it is not required by and/or does not comply with federal and/or state law. Once all challenges have been resolved the report will be adopted and implemented by CCCOE.

**ADA Coordinator**

CCCOE will designate at least one employee at the John A. Davis Juvenile Hall as responsible for coordinating ADA compliance (“ADA Coordinator”). This person will be responsible for ensuring compliance with the ADA generally and for investigating and responding to any ADA complaints.

**Coordination with the Contra Costa County Probation Department**

CCCOE shall use best efforts when implementing the Expert Report to coordinate and cooperate with other authorities operating in and providing services at the John A. Davis Juvenile Hall, including, but not limited to, the County’s Probation Department.

*County Agreement*

**Expert Review of Disciplinary Policies**

Pursuant to the County Agreement the County will retain an expert to conduct a review of the County’s policies, procedures, and practices at the Juvenile Hall in the following areas:

- the use of room confinement;
- the use of behavior incentives;
- coordination between CCCOE and the County’s Probation Department, including but not limited to policies and practices relating to the County’s coordination with CCCOE on CCCOE’s implementation of IEPs, 504 Plans, and behavior intervention plans;

- the identification, assessment, and tracking of youth with disabilities who are detained at Juvenile Hall and referral systems to identify these youth for CCCOE and County Mental Health; and
- implementation of Juvenile Detention Alternatives Initiative (“JDAI”) standard V.D.4., which specifies that disability must be considered in determining an appropriate response when assigning consequences.

This expert will work with another expert retained by the County to develop a joint report setting forth the experts’ proposed revisions to these policies, procedures, and practices.

### **Multi-Disciplinary Teams**

Multi-disciplinary team meetings including representatives from Probation, CCCOE, and Contra Costa County Mental Health will be held at least once per month with additional meetings held as needed. Such meetings will address the following subjects:

- Coordination of responses and interventions for individual youth who are having consistent and/or chronic issues conforming their behavior to expectations, regardless of where or when the behavior occurs;
- Coordination of the provision of special education and counseling services to all eligible youth on all units;
- Discussion of provision of a continuum of placements based on the special education needs of youth in Juvenile Hall, including a process for approving and placing children in non-public schools and residential placements outside of the Juvenile Hall.

### **Attendance at IEP Meetings**

A Probation staff member will attend IEP meetings when requested to do so and the Probation Department has received prior written or oral consent from the education rights holder to attend where any one of the following conditions is met:

- The youth has been removed from the classroom or prevented from attending Mt. McKinley School for more than 9 school days in one school year for disciplinary reasons by the Probation Department and/or CCCOE in response to conduct by the youth. For purposes of determining the number of missed school days, removal or preventions for one school block or less shall not be considered; or
- Where a youth has been detained in the Juvenile Hall for 30 consecutive days or more and a special day class, residential treatment, or a non-public school placement is being recommended or requested as a placement option by CCCOE or the education rights holder for the youth; or
- For youth assigned to the Youthful Offender Treatment Program or the Girls in Motion program or youth who have been detained in the Juvenile Hall for 60 consecutive days or more, where a behavior support/intervention plan is being put in place.

### **Room Confinement**

Pursuant to the County Agreement, Probation will adopt the following standards:

- Staff shall not use room confinement for discipline, punishment, administrative convenience, retaliation, staffing shortages or reasons other than a temporary response to behavior that threatens immediate harm to the youth or others as provided below.
- Staff shall not place youth in continuous room confinement for longer than four hours. After four continuous hours, staff shall return the youth to the general population, develop special individualized programming for the youth, or consult with a qualified mental health professional about whether a youth's behavior requires that he or she be transported to a mental health facility. As part of the expert review, the experts will consider whether and under what conditions it would be appropriate for the youth to remain in room confinement after the initial four hour period as part of special individualized programming, discussed below.
- Staff will develop special individualized programming for youth with persistent behavior problems that threaten the safety of youth or staff or the security of the facility. Staff shall not use room confinement as a substitute for special individualized programming. Special individualized programming includes the following:
  - Development of an individualized plan designed to improve the youth's behavior, created in consultation with the youth, County Mental Health staff, and the youth's family members, when available.
  - The plan identifies the causes and purposes of the negative behavior, as well as concrete goals that the youth understands and that he or she can work toward to be removed from special programming.
  - In-person supervision by and interaction with staff members.
  - In-person provision of educational services.
  - Involvement of youth in other aspects of the facility's programming unless such involvement threatens the safety of youth or staff or the security of the facility.
  - A guarantee that the youth will not be denied any of his or her basic rights.
  - Daily review with the youth of his or her progress toward the goals outlined in his or her plan.

### *General Provisions*

#### **Resolution of Claims**

These Settlement Agreements resolve all claims for injunctive relief brought by Plaintiffs. Except as discussed below, these settlements do not (1) provide for any monetary relief to be paid to members of the class, (2) release any individual claims for damages, or otherwise affect the rights of class members to pursue individual claims for compensatory education or other individual relief pursuant to the IDEA and/or Section 504 of the Rehabilitation Act, and (3) do not affect any claims for reasonable accommodations related to physical access, communication access, and/or accommodations otherwise relating to hearing, vision and/or mobility disabilities arising under the ADA or the Rehabilitation Act. As a part of the County Agreement, the

County has agreed to pay the three named Plaintiffs a total of \$1,140 for the compensatory education awarded to them by an administrative judge in three separate individual due process administrative proceedings. These payments do not affect other class members' rights to bring their own claims for compensatory education based on their individual experiences in Juvenile Hall, and are not part of the class-wide settlement.

### **Attorneys' Fees**

The class was represented by Disability Rights Advocates, Public Counsel, Paul Hastings LLP and Zelle Hofmann Voelbel & Mason LLP ("Class Counsel"). The CCCOE Agreement provides for the payment of \$1,165,000 for reasonable attorneys' fees and costs incurred during the course of the lawsuit with \$70,000 of this amount put aside to compensate for fees, expenses and costs incurred in monitoring Defendant CCCOE's implementation of the Settlement Agreement. The County Agreement provides for the payment of \$1,340,000 as full and final settlement of all attorneys' fees and costs related to the class action and the named Plaintiffs' individual due process claims, as set forth in *Contra Costa County v. Barbara C.*, Civil Case No. C14-00268 MEJ, *Contra Costa County v. CiCi C.*, Civil Case No. C14-00269 MEJ, and *Contra Costa County v. Gail F.*, Civil Case No. C14-00270 MEJ.

### **Fairness of Agreement**

The class representatives and Class Counsel have concluded that the terms and conditions of the proposed Settlement Agreements are fair, reasonable, and in the best interests of the class. In reaching this conclusion, the class representatives and Class Counsel have considered the benefits of the settlement, the possible outcomes of continued litigation of these issues, and the expense and length of continued litigation and possible appeals.

## **OBJECTIONS TO THE SETTLEMENT**

The Court has given preliminary approval of the Settlement Agreements, and has scheduled a hearing for [DATE/TIME] in the Courtroom of the Honorable Magistrate Judge Maria-Elena James, United States District Court for the Northern District of California, 450 Golden Gate Avenue San Francisco, CA 94102, to determine whether the proposed Settlement Agreements are fair and reasonable and should be finally approved.

You can ask the Court to deny approval by filing an objection. You cannot ask the Court to modify the terms of the settlement; the Court can only approve or deny the settlement. If the Court denies approval, the actions outlined in this notice will not occur and the lawsuit will continue. If that is what you want to happen, you must file an objection.

All written objections and supporting papers must (a) clearly identify the case name and number (*G.F. v. Contra Costa County*, Case No. C-13-03667 MEJ), (b) be submitted to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California, and (c) be filed or postmarked on or before [DATE].

Although you are not required to attend the final approval hearing, as a Class Member, you may participate in, and be heard at, this hearing if you have filed a timely written objection that includes a statement of your intention to participate in this hearing. You may appear on your own or through an attorney. If you appear through an attorney, you are responsible for paying that attorney. This hearing date may be changed by the Court without further notice to the entire class. If you wish to be on the electronic service list to be informed of any changes to the schedule, please file a notice of appearance with the Court which includes a valid e-mail address at which you can receive notice.

**IF YOU DO NOT TIMELY SUBMIT AN OBJECTION AS DESCRIBED HEREIN, YOU WILL BE DEEMED TO HAVE WAIVED YOUR OBJECTION AND SHALL BE FORECLOSED FROM MAKING ANY OBJECTION TO THE SETTLEMENT.**

**IF YOU DO NOT OPPOSE THIS SETTLEMENT, YOU NEED NOT APPEAR OR FILE ANYTHING IN WRITING.**

**BINDING EFFECT**

The proposed Settlement Agreements, if given final approval by the Court, will bind all members of the Settlement Class. This will bar any person who is a member of the Settlement Class from seeking different or additional relief regarding all issues resolved in the Settlement Agreements for the term of the Settlement Agreements.

**FURTHER INFORMATION**

This notice summarizes the proposed Settlement Agreements. For the precise terms and conditions of the Settlement Agreements, copies of the Settlement Agreements are available at [www.dralegal.org](http://www.dralegal.org), or by contacting class counsel at Disability Rights Advocate, Attn: Mary-Lee Smith, 2001 Center St. Fourth Floor, Berkeley, CA 94704, Telephone (510) 665-8644, or by accessing the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

**PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.**

**To obtain copies of this Notice in alternative accessible formats, please contact Class Counsel listed above.**