

1 PRISON LAW OFFICE  
2 DONALD SPECTER #83925  
3 SARA NORMAN #189536  
4 KELLY KNAPP #252013  
5 1917 5th Street  
6 Berkeley, CA 94710  
7 Telephone: (510) 280-2621  
8 Facsimile: (510) 280-2704  
9 Email: dspecter@prisonlaw.com

7 LATHAM & WATKINS LLP  
8 MATTHEW RAWLINSON #231890  
9 140 Scott Drive  
10 Menlo Park, CA 94025  
11 Telephone: (650) 328-4600  
12 Facsimile: (650) 463-2600  
13 Email: matthew.rawlinson@lw.com  
14 Email: patrick.snyder@lw.com

11 Attorneys for Plaintiff  
12 DAVID PORTER

13 *(additional counsel listed on final page)*

15 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**  
16 **COUNTY OF SACRAMENTO**

17 DAVID PORTER,  
18 Plaintiff,

19 v.

20 VERNE SPEIRS, Chief Probation Officer,  
21 County of SACRAMENTO and DAVID  
22 GORDON, Sacramento County  
23 Superintendent of Schools,

23 Defendants.

CASE NO. 06AS03654

**[PROPOSED] SETTLEMENT**

1 INTRODUCTION

2 A. Plaintiff David Porter (“Plaintiff”) initiated this action as a taxpayer pursuant to  
3 California Code of Civil Procedure sections 525, 526a and 1060. Subsequently, on September  
4 10, 2008, Plaintiff filed a Fourth Amended Complaint For Injunctive and Declaratory Relief  
5 (“Amended Complaint”).

6 B. This action is directed against the Chief Probation Officer of Sacramento County,  
7 who is designated by state statute as operator of the Sacramento County Juvenile Detention  
8 Facilities. The Sacramento County Department of Probation is referred to herein as “Probation.”  
9 Plaintiff’s Amended Complaint asserts six causes of action against the Probation Chief alleging  
10 that conditions in Sacramento’s Warren E. Thornton Youth Center, Youth Detention Facility  
11 (juvenile hall), and the Carson Creek Boys Ranch violate state law.

12 C. The action is also directed against Defendant David Gordon (“Defendant”) who is  
13 the Sacramento County Superintendent of Schools and the chief executive officer of the  
14 Sacramento County Office of Education. Defendant Gordon, in his official capacity as  
15 Sacramento County Superintendent of Schools, and the Sacramento County Office of Education  
16 operate the schools in the Sacramento Juvenile Detention Facilities, on behalf of the Sacramento  
17 County Board of Education.<sup>1</sup> Plaintiff’s Amended Complaint asserts two causes of action  
18 against Defendant Gordon alleging that he is operating the Esperanza Junior/Senior High School  
19 in the Warren E. Thornton Youth Center<sup>2</sup>, and the El Centro Junior/Senior High School in the  
20 Youth Detention Facility (juvenile court schools) in a manner that does not meet the educational  
21 requirements mandated by law. This Settlement Agreement resolves Plaintiff’s claims against

22 \_\_\_\_\_  
23 1 The duties and obligations of this Settlement are placed on the Sacramento County  
24 Superintendent of Schools in his or her official capacity and not in his or her individual capacity.  
25 This Settlement specifically refers to Defendant Gordon, the Sacramento County Superintendent  
26 of Schools at the time this action was commenced. If and when Mr. Gordon is no longer  
27 Superintendent of Schools, the duties and obligations of this Settlement shall apply for the term  
28 of the Settlement to any successor to the position of Sacramento County Superintendent of  
Schools.

<sup>2</sup> On July 1, 2009, the Sacramento County Board of Supervisors closed the Warren E. Thornton Youth Center and its school (Esperanza Junior/Senior High School) for budget reasons.

1 Defendant Gordon, and any related claims against the Sacramento County Board of Education  
2 and the Sacramento County Office of Education involving the Sacramento County juvenile court  
3 schools.

4 D. On October 3, 2008, Defendant Gordon duly filed his Answer to the Fourth  
5 Amended Complaint, denying the material allegations and asserting affirmative defenses.  
6 Defendant Gordon expressly denies any liability or wrongdoing whatsoever, but has agreed to  
7 enter into this Settlement, without admitting liability, to avoid the extensive time and further  
8 costs of litigation and as a compromise resolution to fully and finally settle and discharge all  
9 claims asserted in the Amended Complaint. Plaintiff and Defendant Gordon (the settling parties)  
10 hereby stipulate to the terms detailed in this Settlement Agreement in order to compromise and  
11 fully and finally settle the dispute between them relating to the facts and claims alleged in the  
12 Amended Complaint. Nothing herein shall constitute or be used as evidence of any admission of  
13 wrongdoing, violation of law, or liability by Defendant, the Sacramento County Board of  
14 Education, or the Sacramento County Office of Education.

15 **SETTLEMENT TERMS**

16 **1. PRELIMINARY EDUCATION PLANS**

17 Sacramento County Office of Education shall develop an adequate preliminary education  
18 plan for all youth detained in the juvenile hall within 5 school days of the student's arrival to the  
19 juvenile hall. The following procedure shall be used to determine whether the Sacramento  
20 County Office of Education staff is developing adequate preliminary education plans for youth:  
21 During inspections of the juvenile court schools, Plaintiff's counsel may randomly select a  
22 reasonable number of students in various housing units. With written consent of the student's  
23 parent, guardian, or educational representative, Sacramento County Office of Education shall  
24 produce the preliminary education plan. In the event a student's parent, guardian, or educational  
25 representative does not consent, the student's name will be redacted or otherwise omitted to  
26 protect student privacy / confidentiality.

27 **2. MINIMUM MINUTES OF EDUCATION**

28



1 Sacramento County Office of Education will comply with the minimum school  
2 day requirements of Education Code section 48645.3 and SBx3 4 (Statutes of 2009).

3 Sacramento County Office of Education will provide Plaintiff's counsel with written evidence  
4 that El Centro Junior/Senior High School has offered a minimum school day as set forth in  
5 Education Code section 48645.3 and SBx3 4 (Statutes of 2009).

6 **3. OVERCROWDING**

7 Sacramento County Office of Education shall not deny educational instruction to  
8 any student housed in Sacramento County juvenile hall on the basis of overflow or lack of  
9 classroom space. Sacramento County Office of Education will provide Plaintiff's counsel with  
10 written evidence of compliance with this provision.

11 **4. REQUIRED COURSE OF STUDY**

12 Sacramento County Office of Education shall provide in the juvenile court  
13 schools the course of study required by Education Code sections 51014, 51200-51220.  
14 Sacramento County Office of Education will provide adequate documentation showing that the  
15 courses of study actually provided to all students at El Centro Jr./Sr. High School comply with  
16 State content standards.

17 **5. SUSPENSIONS FROM SCHOOL**

18 Sacramento County Office of Education shall follow Education Code sections  
19 48900 et seq. when suspending students at El Centro Jr./Sr. High School, including Education  
20 Code sections 48900.5, 48910, and 48911. Sacramento County Office of Education shall  
21 provide adequate documentation to Plaintiff that its suspension policies and practices comply  
22 with applicable law.

23 **6. EDUCATING STUDENTS ISOLATED IN ROOM CONFINEMENT**

24 Room Confinement or Administrative Room Confinement is a procedure where  
25 minors are segregated by Probation. For students who are unable to attend school because they  
26 have been placed on Room Confinement or Administrative Room Confinement, if Probation  
27 delivers the student to the day space, the Sacramento Office of Education shall provide that  
28 student with class assignments and individual instructional assistance for a time period of not

1 less than 20 minutes once per ½ school day during regular school hours, provided that the  
2 Sacramento County Office of Education is not obligated to provide such class assignments or  
3 instructional assistance if the student’s presence outside of his or her room would be a danger to  
4 themselves or others. Sacramento County Office of Education shall provide documentation that it  
5 is in compliance with this provision.

6 **7. Temporary Suspension During an Emergency.**

7 Probation is responsible for the operation of the Juvenile Detention Facilities and  
8 the conditions of juvenile confinement in these facilities. Nothing in this Settlement prevents  
9 Defendant from temporarily suspending compliance with all or any part of the Settlement as may  
10 be necessary during an emergency. Defendant shall advise Plaintiff’s counsel of any such  
11 suspension in writing within 10 days of the temporary or permanent suspension, describing  
12 which portion(s) of this Settlement was/were suspended and the reasons therefor. Plaintiff may  
13 object to any suspension of this Settlement and invoke the dispute resolution procedure set forth  
14 in Paragraph 13, except that emergencies declared by Probation shall be resolved between  
15 Plaintiff’s counsel and Probation.

16 **8. Dismissal with Prejudice and Court’s Continuing Jurisdiction.**

17 Within ten business days after the date on which this Settlement Agreement is  
18 signed, Plaintiff shall file all necessary papers for entry of a final judgment dismissing the action  
19 with prejudice. Plaintiff’s counsel will promptly mail a file-endorsed copy of the filed dismissal  
20 papers to Defendant’s counsel. The settling parties agree that this Settlement is subject to the  
21 provisions of Code of Civil Procedure section 664.6 and that the Sacramento County Superior  
22 Court (Court) shall retain jurisdiction over the parties to enforce, construe, and apply the terms of  
23 this Settlement Agreement and decide any dispute arising under it.

24 **9. Monitoring and Term of Settlement.** In order to monitor and enforce

25 compliance with this Settlement Agreement, Plaintiff’s counsel shall be entitled to visit  
26 classrooms, interview students and staff in a manner that minimizes disruption to classroom  
27 instruction and students’ education, and/or be provided all of the documentation specified in the  
28

1 proceeding paragraphs of this Settlement Agreement up to three times per year on mutually  
2 convenient dates and times during the two years following execution of this Settlement  
3 Agreement. Pursuant to Education Code section 49075, Plaintiff's counsel shall obtain  
4 appropriate written consent before reviewing student educational records as referenced above.

5 **10. No Admissions.** Neither the fact of this Settlement nor any statements or  
6 claims contained herein shall be used in any other case, claim or administrative proceeding,  
7 except that Defendant, the Sacramento County Board of Education, the Sacramento County  
8 Office of Education, and their employees and agents may use this Settlement and any statement  
9 contained herein to assert issue preclusion or *res judicata*.

10 **11. Confidentiality.** Confidential Information exchanged for purposes of  
11 monitoring compliance with this Settlement shall be subject to the provisions of the Protective  
12 Order attached hereto as Exhibit A, which is expressly incorporated into this Settlement.

13 **12. Full and Final Release.** Subject to paragraphs 13 and 14 below, Plaintiff  
14 and Plaintiff's counsel hereby release, acquit and forever discharge Defendant Gordon, the  
15 Sacramento County Board of Education, and the Sacramento County Office of Education from  
16 any and all claims, demands, actions, causes of action, suits, obligations, controversies, expenses,  
17 costs, and fees of any type or nature whatsoever, in equity or at law, by statute or common law,  
18 which have been or could have been alleged in this action.

19 **13. Dispute Resolution.** The settling parties shall endeavor in good faith to  
20 resolve informally any dispute that may arise relating to this Settlement or any request for a  
21 modification or clarification of any portion of this Settlement. Any party may begin this  
22 informal dispute resolution process by written notice to the opposing party. If Plaintiff's  
23 counsel believes there is a violation of the Settlement Agreement by Defendant Gordon, Plaintiff  
24 agrees first to notify Defendant Gordon and give him a reasonable time to cure. If there is no  
25 agreement on the cure, then the parties agree to do a good faith mediation lasting at least for one  
26 half day and not more than one full day with a mutually acceptable mediator. The parties are to  
27 split the cost of the mediator. If the mediation is unsuccessful then the Plaintiffs may proceed to  
28



1 court to enforce the Settlement Agreement. Upon a decision by the court favorable to Plaintiff,  
2 the parties agree that the court may award court costs and attorney's fees to the prevailing  
3 Plaintiff. In addition, reasonable attorney's fees may be awarded to the prevailing defendant  
4 upon a finding by the court that the Plaintiff's prosecution of the court action was not in good  
5 faith.

6 **14. Attorneys' Fees and Costs.** Defendant Gordon agrees to pay and  
7 Plaintiff's counsel have agreed to accept \$450,000 (Four Hundred and Fifty Thousand Dollars)  
8 in full payment of the attorneys' fees and costs incurred by all of Plaintiff's counsel. This  
9 amount shall be paid by Defendant Gordon through a check made payable to and delivered to  
10 Latham & Watkins LLP within 30 (thirty) days of the execution of this Settlement Agreement.

11 **15.** The settling parties agree that this Settlement Agreement is the product of  
12 their mutual negotiation and preparation and, accordingly, it shall not be deemed to have been  
13 prepared or drafted by either party. The parties further agree that any court seeking to interpret  
14 this Settlement Agreement should construe it as the product of mutual negotiation and  
15 preparation.

16 **16.** The parties agree that this Settlement Agreement constitutes the sole,  
17 entire, and complete agreement between the settling parties to resolve the claims set forth in  
18 Plaintiff's lawsuit. This Agreement may not be altered, amended, modified, or otherwise  
19 changed in any way except by a writing duly executed by an authorized representative of the  
20 settling parties.

21 **17.** This Settlement Agreement may be signed in separate counterparts, each  
22 of which shall be deemed an original, and said counterparts shall together constitute one and the  
23 same Settlement Agreement, binding the settling parties notwithstanding that all of the settling  
24 parties have not signed the original or same counterpart.

25 **18.** The terms of this Settlement Agreement are contractual and not mere  
26 recitals.

27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

19. Each settling party acknowledges and declares that it has read this Settlement Agreement in its entirety, that it knows and understands the contents of the Agreement, that it fully understands and appreciates the words and terms and effect of this Agreement, and that this Agreement has been executed freely, knowingly, and voluntarily.

20. The undersigned and their counsel represent that the party signing this settlement has the full authority to execute this Settlement Agreement on each of the party's respective behalf and to bind the parties.

21. The settling parties agree that this Settlement Agreement shall be effectuated through a judgment of dismissal with prejudice subject to continued court jurisdiction as set forth in paragraph 8 above. The judgment shall become final for all purposes upon entry of judgment, and the settling parties waive any right to appeal or to seek review of this judgment by a higher court.

Wherefore, the undersigned, being duly authorized, agree to be bound by the terms of this Settlement Agreement and have executed this Settlement Agreement on the dates shown below.

SO STIPULATED:

Dated: December 23, 2009

January 4, 2010 *DS*  
Dated: December \_\_, 2009



David Porter, Plaintiff



David Gordon, Sacramento County Superintendent of Schools, Defendant



1 APPROVED AS TO FORM:

2 PRISON LAW OFFICE

Trujillo & Vinson

3 Dated: December 27, 2009

Dated: December 28, 2009

4

5 By: Donald Specter  
Donald Specter  
Counsel for Plaintiff

By: Phillip A. Trujillo  
Phillip A. Trujillo  
Counsel for Defendant

7

(additional counsel)

8

9 ARNOLD & PORTER LLP  
10 MONTY AGARWAL #191568  
275 Battery Street, Suite 2700  
San Francisco, CA 94111  
11 Telephone: (415) 356-3000  
Facsimile: (415) 356-3099  
12 Email: monty.agarwal@aporter.com

13

BINGHAM MCCUTCHEN LLP  
14 DIANE BARKER #245779  
Three Embarcadero Center  
San Francisco, CA 94111-4067  
15 Telephone: (415) 393-2000  
Facsimile: (415) 393-2286  
16 Email: diane.barker@bingham.com

17

CHAVEZ & GERTLER LLP  
18 MARK A. CHAVEZ #90858  
42 Miller Avenue  
Mill Valley, CA 94941  
19 Telephone: (415) 381-5599  
Facsimile: (415) 381-5572  
20 Email: mark@chavezgertler.com

21  
22  
23  
24  
25  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

DAVID PORTER,  
  
Plaintiff,  
  
v.  
  
VERNE SPEIRS, Chief Probation Officer of  
Sacramento County, DAVID GORDON,  
Sacramento County Superintendent of Schools,  
  
Defendants.

Case No.: 06AS03654  
  
**STIPULATED PROTECTIVE ORDER**

1           Upon the agreement of Plaintiff David Porter and Defendant David Gordon (referred to  
2 individually as a “Party” and collectively as the “Parties”), the Court hereby ORDERS as  
3 follows:

4           **1.       PURPOSES AND LIMITATIONS**

5           The Parties have entered into this Settlement, which will resolve the above-captioned  
6 matter with respect to Defendant Gordon. The Settlement provides for ongoing efforts to  
7 improve the education services at the schools in Sacramento County juvenile detention facilities.  
8 The Settlement will permit Plaintiff’s counsel of record in this matter, and their representatives,  
9 to monitor compliance with the Settlement.

10           To effectively perform the tasks and duties required under the Settlement, the Parties  
11 have agreed that, with appropriate written consent, Plaintiff’s counsel of record, and their  
12 representatives, should have access to certain facilities, books, records, staff and students.  
13 Defendant has agreed to make available to Plaintiff’s representatives this information for the  
14 time period set forth in the Settlement. This Stipulated Protective Order governs the exchange of  
15 such information as set forth in the Settlement so as to ensure that any confidentiality of such  
16 records and information is maintained.

17           **2.       SCOPE**

18           The provisions of this Stipulated Protective Order apply to any information disclosed to  
19 the Parties under the terms of the Settlement that is subject to confidentiality under California  
20 constitutional, statutory, or regulatory law, including but not limited to California Welfare &  
21 Institutions Code section 827, and Education Code sections 49061 et seq. and also applies to any  
22 information copied or extracted therefrom, as well as all copies in any form whatsoever, whether  
23 paper or electronic, and any other media, excerpts, summaries, or compilations (“Protected  
24 Material(s)").

25  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**3. DURATION**

This Stipulated Protective Order shall be continuous with the duration of the Settlement. Thereafter, any confidential materials subject to this Stipulated Protective Order shall be returned to the Sacramento County Office of Education or destroyed, with the destroying party certifying in writing as to the destruction.

**4. DESIGNATING PROTECTED MATERIAL**

4.1 Each Party that discloses information or items for protection under this Stipulated Protective Order must take care to limit any such designation to specific material that qualifies under an appropriate rule of law. A designating Party must take care to designate for protection only those parts of material, documents, items, or oral or written communications that qualify, such that other portions of the material, documents, items, or communications for which protection is not warranted are not unjustifiably designated as Protected Materials. If it comes to a designating Party’s attention that information or items that it designated for protection do not qualify for protection, such party must promptly notify all other Parties that it is withdrawing the mistaken designation.

4.2 Manner and Timing of Designations. Material that qualifies for protection under this Stipulated Protective Order must be clearly so designated before the material is disclosed or produced. For information in documentary form a disclosing Party shall in some written manner indicate or affix the legend “Confidential” at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the designating Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins). For information produced in some form other than documentary, and for any other tangible items, the disclosing Party shall affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “Confidential.” If only portions of the information or item warrant protection, the producing Party, to the extent practicable, shall identify the protected portions.

1           4.3    Inadvertent Failures to Designate. Should a disclosing Party inadvertently fail to  
2 designate Protected Materials, the Party may correct such mistake by timely notifying all other  
3 Parties and producing copies of the Protected Materials marked with the appropriate designation.

4           **5.       ACCESS TO AND USE OF PROTECTED MATERIAL**

5           5.1    Person Authorized To Use Protected Material. Plaintiff’s counsel of record in this  
6 action and their in-house staff and vendors may access and use the Protected Materials. Persons  
7 assisting in any dispute resolution proceeding pursuant to section 13 of the Settlement may  
8 access and use the Protected Materials. Prior to being given access to Protected Material, any  
9 authorized person must first acknowledge and sign the “Confidentiality Undertaking” attached to  
10 this Stipulated Protective Order.

11          5.2    Use Must Be For Purpose of Fulfilling Settlement. A person authorized to access  
12 Protected Material pursuant to this Stipulated Protective Order may only use such Materials for  
13 purposes of furthering the goals of this Settlement, including, but not limited to reviewing  
14 education services at the juvenile court schools, making recommendations, and monitoring  
15 progress and compliance with the Settlement.

16          5.3    No Further Dissemination: Neither the Protected Materials nor any portion of the  
17 Protected Materials shall be made attachments to any other documents or released or published  
18 to any non-authorized person.

19           **6.       UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

20          If a Party learns that, by inadvertence or otherwise, Protected Material has been disclosed  
21 to any person or in any circumstance not authorized under this Stipulated Protective Order, the  
22 Party must immediately (a) notify in writing the designating Party of the unauthorized  
23 disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, and (c) inform  
24 the person or persons to whom unauthorized disclosures were made of all the terms of this  
25 Stipulated Protective Order.

26  
27  
28

1 **CONFIDENTIALITY UNDERTAKING**

2  
3 I, \_\_\_\_\_, hereby acknowledge that:

4 (a) My current employer is \_\_\_\_\_. The address of my  
5 current employer is \_\_\_\_\_. My  
6 telephone number is \_\_\_\_\_.

7 (b) My current occupation or job description is:

8 \_\_\_\_\_.

9 (c) I have received and carefully read the Stipulated Protective Order dated  
10 \_\_\_\_\_, and I understand its provisions. I will protect Protected Material disclosed to me  
11 and will not disclose it to anyone not qualified under the Protective Order. In addition, I  
12 understand that I must abide by all of the provisions of the Protective Order. I will undertake to  
13 ensure that those working under my supervision abide by these requirements.

14 (d) At or before the termination of the Settlement in this matter, I will return  
15 to the Sacramento County Office of Education all documents and other materials, including  
16 notes, computer data, summaries, abstracts, or any other materials, containing or reflecting the  
17 Protected Materials that have come into my possession or destroy such Protected Materials.

18 (e) I understand that I am subject to the jurisdiction of the Superior Court of  
19 California, County of Sacramento, for purposes of enforcing the Protective Order, and I further  
20 understand that if I violate the provisions of the Protective Order, I will be in violation of a Court  
21 Order.

22  
23  
24 \_\_\_\_\_  
25 Date

\_\_\_\_\_

Signature