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SUPERIOR COURT
THURSTON COUNTY WASH

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BETTY J. GOULD CLERK
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

SERGIO BLAKELEY, et al., Plaintiffs, v. TERESA BERGESON, et al., Defendants.	NO. 01-2-02025-8 RELEASE AND SETTLEMENT AGREEMENT

This is a Release and Settlement Agreement for the above referenced action. Based upon consideration and mutual promises, the Parties, including the Plaintiff Class (as defined by the Court in its Order dated June 13, 2002), by and through their attorneys, Hank Balson, Patricia Arthur, and Amy Tsai; Defendant Department of Corrections (DOC) Secretary Joseph Lehman, by and through his attorneys, CHRISTINE O. GREGOIRE, Attorney General, and Assistant Attorneys General Carol Murphy and Aileen Miller; and Cape Flattery School District (CFSD) Superintendent Gene Laes, by and through his attorneys Michael Patterson and Karen Kalzer, agree to the following:

1. In consideration of the following provisions of the Release and Settlement Agreement, Plaintiffs (meaning named Plaintiffs and all class members), their heirs, assigns or other successors in interest, do hereby release and forever discharge the Defendants, State of Washington and CFSD, their officers, agents, employees and agencies and departments for

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any and all existing and future claims, damages and causes of action of any nature arising out of these incidents which are described in plaintiffs' Complaint in this action and which are the source of their claims against the Defendants, subject to the limitation set forth in paragraph 2. This agreement does not constitute an admission of liability, wrongdoing or violation of any state or federal regulation, state or federal law, or state or federal constitutional provision by any party to this Agreement, or any other agent, officer, employee, or department of the State of Washington or CFSD.

2. The special education claims raised in the Complaint have been previously dismissed without prejudice. The Plaintiffs maintain their rights to pursue any remedies pursuant to 20 U.S.C. Section 1400, 34 CFR Part 300, WAC Chapter 392–172, 29 U.S.C. Section 794, and 34 CFR Part 104, and defendants maintain their rights to raise all defenses in any such action. Any future litigation would not be filed under the name or cause number of this action.

3. During the time that DOC maintains a Youthful Offender Program at any DOC facility, DOC has the following obligations regarding youth offenders in the Intensive Management Unit:

A. DOC will make the Intensive Management Unit (IMU) programming room available for use by CFSD, or contract education provider, for two hours per day for IMU Youthful Offender Program (YOP) inmates. During these two hours, CFSD, or contract education provider, will provide either group, and/or individualized, instruction to YOP offenders housed in the IMU. DOC in conjunction with CFSD will provide access to education in the IMU program room in accordance with the following parameters:

i) Youth offenders who will be housed in the IMU for ten (10) days or less, or who are on isolation as a sanction for a serious infraction committed while in the IMU, will receive instruction in the form of individualized educational packets that will be delivered to the youth offender within three (3) days, or sooner, excluding weekends

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and holidays, of their placement in the IMU. These youth offenders will not receive instruction in the IMU programming room.

ii) Youth offenders who will be housed in the IMU for more than ten (10) days and who are not on isolation will receive weekly individualized educational packets that will be delivered to the youth offender within three (3) days, or sooner, excluding weekends and holidays, of their placement in the IMU. In addition to the packets, these youth offenders will receive four hours of face to face instruction per five (5) day school week.

B. CFSD may request that particular offenders be allowed to attend instruction at the same time, in the IMU program room. DOC will accommodate this request to the extent that legitimate penological interests will not be implicated.

C. Instruction will not be provided on holidays, or school breaks that fall between Monday and Friday of any given week.

4. During the time that DOC maintains a Youthful Offender Program at any DOC facility, DOC has the following obligations regarding inmates in the Restricted Movement Pod:

A. DOC will make a classroom or no-contact booth available for use by CFSD staff, or the contract education provider, for three (3) hours per day each school day for students housed in the Restricted Movement Pod (RMP). During these three hours, CFSD, or the contract education provider, will provide either group and/or individualized instruction to YOP offenders housed in the RMP.

B. Youth offenders who are housed in the RMP will receive instruction in the form of weekly individualized educational packets that will be delivered to the youth offenders within three (3) days, or sooner, excluding weekends and holidays, of their

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placement in the RMP. In addition to the packets, these youth offenders will receive four (4) hours of face to face instruction per five (5) day school week.

C. Instruction will not be provided on holidays, or school breaks that fall between Monday and Friday of any given week.

5. During the time that DOC maintains a Youthful Offender Program at any DOC facility, youth offenders placed on a Level One transition plan will be allowed to attend a half or full day of school with the general YOP population.

6. During the time that CFSD contracts as the education service provider for the YOP, CFSD has the following obligations:

A. During available hours at the IMU, CFSD will provide either group, and/or individualized, instruction to YOP offenders housed in the IMU.

B. CFSD staff will utilize the classroom or no contact booth to provide instruction to offenders in the RMP during available hours on each school day.

C. CFSD may request that particular offenders be allowed to attend instruction at the same time, in the IMU program room. DOC will accommodate this request to the extent that legitimate penological interests will not be implicated.

D. CFSD will prepare and deliver weekly individualized educational packets to youth offenders in the IMU and RMP, within three (3) days, or sooner, excluding weekends and holidays, of their placement in the IMU or RMP.

E. In addition to the packets, CFSD will provide youth offenders in the IMU, whose stay is longer than ten (10) days and who are not on isolation, four (4) hours of face to face instruction per five (5) day school week.

F. Youth offenders who are housed in the RMP will receive instruction in the form of weekly individualized educational packets that will be delivered to the youth offenders within three (3) days, or sooner, excluding weekends and holidays, of their

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placement in the RMP. In addition to the packets, these youth offenders will receive four (4) hours of face to face instruction per five (5) day school week.

G. Instruction will not be provided on holidays, or school breaks that fall between Monday and Friday of any given week.

7. The parties recognize that safety and security concerns of CBCC staff, including, but not limited to, CBCC unit lockdowns or individual inmate modifications of conditions of confinement, may impact educational services. For example, no movement modifications would preclude delivery of face to face instruction, and paper modifications would preclude instruction through packets. Under such circumstances, CBCC and CFSD are temporarily relieved of the obligations listed above to the extent that, and so long as, the provision of the required educational services would jeopardize the safety or security of the institution. The safety and security concerns that restrict educational services cannot form the basis for a breach of contract claim under this agreement, but may form the basis of a new lawsuit and the Defendants agree not to raise a res judicata defense in that case if the challenged action occurs after the effective date of this agreement.

8. The parties agree that no party is to be considered a prevailing party in this action, for any purpose, including, but not limited to, attorneys' fees and costs, and that each party will bear its own attorneys fees and costs in this matter.

9. This Agreement shall be effective when signed by all parties and/or their legal representatives. The agreement of Plaintiffs' counsel is subject to approval by the named Plaintiffs.

10. On December 13, 2002, a signed copy of this agreement, and the proposed notice shall be presented to the court for approval. All parties and the court must approve of the notice. Plaintiffs counsel shall mail the approved notice to all class members within fifteen (15) days of the court's approval of the settlement agreement. Within forty-five (45) days after the

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notice is posted in the YOP Red, Brown, and Green Pod bulletin boards, the court will have a final hearing at which any objections to the settlement agreement by the class members will be heard. After forty-five (45) days, the notice may be removed by DOC.

11. This Agreement constitutes the final written expression of all the terms of this Agreement and is a complete and exclusive statement of these terms.

12. The parties jointly agree that dismissal with prejudice of this lawsuit is an appropriate resolution in consideration for the terms stated herein. The parties also agree to sign and file a stipulated motion for the entry of an order dismissing this action with prejudice, consistent with paragraphs 1 and 2 above.

13. The Plaintiffs agree and covenant not to sue the Defendants, the State of Washington, CFSD, or their agencies, employees, and officials over the claims concluded by this settlement agreement, subject to the exception in paragraph 2.

14. The undersigned declare that the terms of this Release and Settlement Agreement are completely read, wholly understood, and voluntarily accepted for the purpose of making a full and final compromise, adjustment and settlement of any and all claims brought by plaintiffs in this action against any and all defendants.

15. The parties will attempt to resolve any dispute arising under this Release and Settlement Agreement informally through their attorneys by negotiating in good faith. If Plaintiffs, or their counsel, believe that Defendants are not in compliance with their obligations set forth in this Release and Settlement Agreement, they must inform the Defendants of the purported violations of the terms of this agreement in writing. Defendants should be allowed at least sixty (60) days from the notice to correct any purported violations brought to their attention by Plaintiffs' counsel. If the parties are unable to resolve disputes regarding compliance with this Release and Settlement Agreement, then the aggrieved party, or parties, will submit the dispute to mandatory mediation within ninety (90) days of the

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notice. If the parties cannot agree on a mediator, any party may petition the court for appointment of a mediator. After at least one hundred twenty (120) days, any party may initiate a breach of contract action in Superior Court to enforce this agreement, subject to the limitations in paragraph 7.

16. This Release and Settlement Agreement may be modified only with the written agreement of all parties.

17. The parties agree that any pending deadlines are stayed pending approval of this agreement by the Court.

DATED this 2d day of December, 2002.

CHRISTINE O. GREGOIRE
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COLUMBIA LEGAL SERVICES

(subject to ¶ 9 above)
PATRICIA J. ARTHUR, WSBA #13769
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Attorneys for Plaintiffs

Approved on this 14 day of March, 2003.

JUDGE DANIEL J. BERSCHAUER
Thurston County Superior Court

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