

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: DISTRICT ATTORNEY

BOARD AGENDA # *B-6

Urgent

Routine

AGENDA DATE November 9, 2010

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval to Authorize District Attorney's Office to Enter into a Contract with Pacific Educational Services, Inc. to Operate a Misdemeanor Diversion Program

STAFF RECOMMENDATIONS:

1. Authorize the District Attorney to sign the contract with Pacific Educational Services, Inc. to operate a misdemeanor diversion program including any extensions, or agreements.
2. Approve the contract terms that allow the District Attorney's Office to charge and/or collect an administrative fee to defray some of the cost of running the misdemeanor diversion program as deemed appropriate by that department.

FISCAL IMPACT:

The District Attorney's Office is using a company that will run this program at no cost to the county. An administrative fee will be assessed on participants to recover some personnel and operating costs of the District Attorney's Office.

BOARD ACTION AS FOLLOWS:

No. 2010-697

On motion of Supervisor Chiesa, Seconded by Supervisor O'Brien

and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, DeMartini, and Vice-Chairman Monteith

Noes: Supervisors: None

Excused or Absent: Supervisors: Chairman Grover

Abstaining: Supervisor: None

1) Approved as recommended

2) Denied

3) Approved as amended

4) Other:

MOTION: THIS ITEM WAS REMOVED FROM THE CONSENT CALENDAR AND PLACED ON NON-CONSENT FOR DISCUSSION AND CONSIDERATION

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

Approval to Authorize District Attorney's Office to Enter into a Contract with Pacific Educational Services, Incorporated to Operate a Misdemeanor Diversion Program

DISCUSSION:

In the case of *Davis v. Municipal Court* (1988) 46 Cal.3d 64, 77, the California Supreme Court determined that a district attorney's enforcement authority included the discretion either to prosecute, or to decline to prosecute an individual when there was probable cause to believe the individual had committed a crime and that in exercising such discretion, prosecutors have traditionally considered whether there are alternative programs in the community in which the defendant's participation would serve the interests of the administration of justice better than prosecution. The court also noted that frequently prosecutors agreed to forego prosecution on the condition that the defendant participated in such an alternative program.

The District Attorney's Office has determined that a misdemeanor diversion program is needed to free up valuable, and scarce, resources when facing unprecedented budgetary cut-backs. The Department has consulted with numerous out-of-county agencies and gathered information about setting up a diversion program. The Department received proposals from three companies and has accepted the program offered by Pacific Educational Services, Incorporated, (hereafter PES) as the best for the Department.

The diversion program run by PES will require a misdemeanor defendant referred by the District Attorney to attend a class, or classes, to help prevent the reoccurrence of the criminal behavior. If a defendant completes the class, then the case will be dismissed and no conviction will appear on their record. The defendant must pay for the class and meet other terms and conditions. The District Attorney's Office will first evaluate eligible cases and determine whether criminal charges are appropriate and, thereafter, whether a referral to the program would be in the interest of justice under established criteria.

By establishing a pre-filing misdemeanor diversion program, the District Attorney's Office will reduce court caseloads of her staff and that of the Public Defender. This is necessary considering the staff reductions the Department has endured over the past few years. By winnowing out low-level, or misdemeanor crimes, staff will be able to concentrate on more serious offenses. The eligibility criteria will also limit those that can participate in this program to low-level offenders and this should also make the program more successful.

POLICY ISSUES:

Acceptance of this program will assist the District Attorney's Office in meeting the Board's goal of A Safe Community and Efficient Delivery of Resources.

STAFFING IMPACTS:

There are no negative staffing impacts at this time. Even a minor reduction in the misdemeanor caseload may allow a diminished number of staff to focus on more serious cases.

CONTACT INFO:

Birgit Fladager, District Attorney (209) 525-5550

**AGREEMENT TO PROVIDE
DVP PROGRAM**

THIS AGREEMENT ("Agreement") is made on _____ by and between the County of Stanislaus, a political subdivision of the State of California (hereafter referred to as "County") and Pacific Educational Services, Inc., a California corporation ("PES").

RECITALS

THIS AGREEMENT is made with reference to the following:

A. The County of Stanislaus District Attorney's Office ("District Attorney") has determined it is in the best interest of the County to establish a PES Pre-Plea Diversion Program (hereafter referred to as DVP) for certain misdemeanor cases; and

B. The District Attorney has recommended that PES provide said programs; and

C. The County desires to obtain the services of PES to provide a DVP for certain misdemeanor cases; and

D. PES desires to provide to the County those services necessary to operate the DVP within the County.

NOW, THEREFORE, the parties agree as follows:

THE PROGRAM:

1. In the DVP, the District Attorney's decision to charge a Participant will be made in the conventional manner of evaluating a case. After the District Attorney has determined that a criminal case will be issued, then the District Attorney will determine if the Defendant is eligible for the DVP and, if eligible, will offer the defendant the opportunity to participate in the DVP.
2. The District Attorney will notify the defendant by letter they can take a defined PES program and if they complete said program and pay any restitution ordered by the District Attorney and not commit any additional offenses before completing the DVP, the defendant's case will not be filed with the court.

3. If the Participant does not timely enroll in said program, pay the program fee, complete the program, pay restitution, if any, and/or commits an additional offense before completing the DVP, the defendant will be terminated from the DVP and then the District Attorney will file the case with the Courts.
4. Successful completion of the program by the defendant shall include: (1) completing the appropriate PES educational program; (2) paying the PES educational program fee and a \$20.00 administrative fee to the District Attorney; (3) paying restitution required by the District Attorney, if any; and (4) not committing any additional offense while in the DVP.
5. Four types of classes will be offered (and this section may be amended at any time by agreement between the parties):
 - i. Anger Management
 - ii. Theft and Property Violation
 - iii. Drug and Alcohol
 - iv. Lifeskills
6. Other types of classes may be added later.
7. Two levels of classes will be offered. Level I will initially cost \$200, (including the \$20 administrative fee), for a 6-hour class, held on weekends. Level II will initially cost \$330, (including the \$20 administrative fee), for a 12-hour class, held on weekends.
8. An administrative fee of \$20 will be charged. This fee will be collected by PES and paid to the District Attorney.
9. The District Attorney determines if restitution will be required.
10. The District Attorney will send to PES referral information for defendants who are being sent the DVP eligibility letter.
11. Defendants have 10 days to enroll with PES and pay at least a portion of the class costs.
12. After having been notified by the District Attorney of a defendant being referred to the DVP, PES will contact defendants to enroll them.
13. PES will notify the District Attorney if a defendant does not timely enroll.

14. Upon the full payment by the defendants of his/her program fees, PES will pay the District Attorney the \$20.00 administrative fee for those defendants.
15. All defendants must pay full fees, but PES does provide payment plans for defendants who cannot pay all of the fees at one time.
16. The classes must be paid for in full before the defendant attends the class.
17. Multiple attempts will be made by PES to enroll the defendants into the DVP.
18. Statistics on the DVP will be provided to the District Attorney by PES on a regular, scheduled basis, pursuant to the District Attorney's request.
19. Classes will be scheduled by PES as the needs require.
20. Defendants are notified of the class schedules and then reminded of the class schedules.
21. PES manages and collects the restitution, if any. The District Attorney will provide the victim information to PES.
22. PES pays the restitution amounts to the victims and accounts to the District Attorney's Office for said payments.
23. Upon enrollment, PES will notify defendants of their program "complete by" date which will be approximately 90 days from the date of their enrollment with PES.
24. Upon completion of the DVP, PES will send a completion form to the District Attorney and defendant.
25. If a defendant needs an extension due to payments, class schedules, etc., PES can extend the completion date by 30 days. Any additional extensions may be requested of the District Attorney by PES for the defendant.
26. If the defendant is terminated from the DVP, PES will send a termination notice to the District Attorney and defendant.
27. Completions and terminations will be e-mailed or faxed by PES to the District Attorney and mailed or e-mailed to the defendants.
28. As requested by the District Attorney, PES will train all District Attorney's staff regarding the DVP processes and procedures.

29. Any restitution ordered by the District Attorney to be paid by a defendant will be collected by PES and deposited into an account established exclusively for those purposes. Disbursements will be made monthly or quarterly to the victim, or as otherwise directed by the District Attorney. PES will collect \$25.00, per month, for monitoring and disbursing defendant's restitution, to defer the administrative costs of said monitoring and disbursing.

GENERAL:

30. All services under this Agreement will be provided by PES at no charge to the County or the District Attorney. Said services shall be provided by PES under the general supervision of the District Attorney.

31. **NONDISCRIMINATION:** PES certifies, unless specifically exempted, compliance in providing the Services with California Government Code Section 12990 and Administrative Code, Title II, Division 4, Chapter 5 in matters relating to the development, implementation, and maintenance of nondiscrimination programs. PES agrees not to unlawfully discriminate against any Participant, employee or applicants for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, sexual orientation or age.

32. **BOOKS:** PES will maintain its books pertaining to collection of the administrative fee and/or restitution in accordance with generally accepted accounting principles. These books and records will be made available to the County at all reasonable times for inspection, audit and/or reproduction.

33. **CONFIDENTIALITY OF RECORDS:** PES agrees to maintain the confidentiality of any defendant records.

34. **INDEPENDENT CONTRACTOR:** PES, including its professional and non-professional staff, will act in an independent capacity in the performance called for in this Agreement and not as officers, employees, or agents of the County. PES shall furnish all personnel, supplies, equipment, furniture, insurance, telephone and facilities necessary for its performance of this Agreement.

35. **INSURANCE:** PES shall file with COUNTY a Certificate of Insurance, in

companies acceptable to COUNTY, showing:

36. **WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE:** PES shall maintain Workers' Compensation Insurance as required by any applicable law or regulation. Said policy shall be provided in amounts not less than five hundred thousand dollars (\$500,000) for each accident.

37. **GENERAL LIABILITY INSURANCE:** PES shall maintain Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of PES, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:
 - One million dollars (\$1,000,000) each occurrence
 - One million dollars (\$1,000,000) aggregate

38. **CANCELLATION NOTICE:** The policies required herein shall contain the language substantially similar to the following: "This policy shall not be cancelled or materially changed without first giving thirty (30) days prior written notice to Stanislaus County."

39. **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT:** PES hereby agrees to protect, defend, indemnify, and hold Stanislaus County free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character including, but not limited to, the amounts of judgments, penalties, interest, court costs, and all other expenses incurred by Stanislaus County arising in favor of any party, including claims, liens, debts, personal injuries, death, or damage to property (including employees or property of the County) and without limitation by enumerations, all other claims or demands of every character occurring or in any way incident to, in connection with, or arising directly or indirectly out of, this contract or agreement. This provision is not intended to create any cause of action in favor of any third party against PES or the County or to enlarge in any way PES's liability but is intended solely to provide for indemnification of Stanislaus County from liability for damages or injuries to third persons or property arising from PES's performance pursuant to this contract or agreement. As used above, the term County means Stanislaus County or its officers, agents, employees and volunteers.

40. **ASSIGNMENT/SUCCESSION:** PES shall not assign this Agreement in part or in whole, without the prior written consent of the County. This Agreement shall inure to the benefit of, and be binding on, the successors

and assignees of the parties hereto.

41. **TERMINATION:** Unless earlier terminated by the written agreement of the parties, this Agreement shall terminate one (1) year after the date hereof.
42. **NOTICES:** Notices to the parties in connection with this shall be given, in writing, by regular mail addressed, as follows:

If to the District Attorney:

District Attorney
Office of the District Attorney of Stanislaus County
832 12th Street, Suite 300
Modesto, CA 95354

If to PES:

Pacific Educational Services, Inc.
Attention: Walter E. Stockman, President
11837 Kemper Road, Suite 2
Auburn, CA, 95603

43. **GOVERNING LAW:** This agreement shall be governed by and construed under the laws of the State of California.
44. **RENEWAL CLAUSE:** This agreement may be renewed annually for periods of one (1) year upon the mutual consent of both parties.


IN WITNESS WHEREOF:

COUNTY OF STANISLAUS:

By: _____
Birgit Fladager
District Attorney

Approved as to form: 
John Doering, County Counsel

PACIFIC EDUCATIONAL SERVICES, INC:

By: 
Walter E. Stockman
President

and assignees of the parties hereto.

41. **TERMINATION:** Unless earlier terminated by the written agreement of the parties, this Agreement shall terminate one (1) year after the date hereof.
42. **NOTICES:** Notices to the parties in connection with this shall be given, in writing, by regular mail addressed, as follows:

If to the District Attorney:

District Attorney
Office of the District Attorney of Stanislaus County
832 12th Street, Suite 300
Modesto, CA 95354

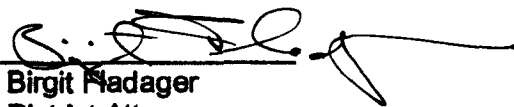
If to PES:

Pacific Educational Services, Inc.
Attention: Walter E. Stockman, President
11837 Kemper Road, Suite 2
Auburn, CA, 95603

43. **GOVERNING LAW:** This agreement shall be governed by and construed under the laws of the State of California.
44. **RENEWAL CLAUSE:** This agreement may be renewed annually for periods of one (1) year upon the mutual consent of both parties.

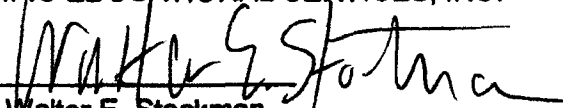
IN WITNESS WHEREOF:

COUNTY OF STANISLAUS:

By: 
Birgit Madager
District Attorney

Approved as to form: _____
John Doering, County Counsel

PACIFIC EDUCATIONAL SERVICES, INC:

By: 
Walter E. Stockman
President