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CLERK, U.S. DISTRICT COURT
JUN 15 2006
CENTRAL DISTRICT OF CALIFORNIA
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

KATIE A., *et al.*,
Plaintiffs,
v.
DIANA BONTÁ, *et al.*,
Defendants.

CASE NO. CV 02-5662 AHM (SHx)
ORDER RE PLAINTIFFS' MOTION
RE ADVISORY PANEL PLAN

Plaintiffs have moved for an order (1) directing the Advisory Panel ("Panel") to develop a detailed and comprehensive plan as contemplated by the Settlement Agreement; (2) requiring the County defendants to assist the Panel in the development of such a plan; and (3) requiring the County defendants "to implement forthwith all of the specific proposed corrective measures or tasks recommended by the Panel" in its August 16, 2005 Fifth Report to the Court. Although in their reply papers Plaintiffs stress that they are not seeking to enjoin the County from proceeding with its plan, Reply at 2-3, elsewhere they characterize their proposal as one "Empowering the Panel and Compelling Compliance with Their [sic] Corrective Actions" *Id.* at 19.

The Court and the Parties have been significantly aided by the Panel's many

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1 positive contributions to the implementation of the Settlement Agreement. The
2 Panel's distinguished members have worked very hard for a long time. They should
3 continue to have a vital role in this case.¹ Nonetheless, the Court DENIES Plaintiffs'
4 motion.² Instead, after the parties have had an opportunity to respond to this Order,
5 the Court expects to order further measures, specified below, to enforce compliance
6 with the Settlement Agreement.

7 The following considerations support this decision.

- 8 1. Sound principles of public policy, governance and the allocation of official
9 responsibilities require that the persons and authorities who are charged with
10 carrying out a costly, complicated, court-ordered social welfare plan also be
11 the ones primarily responsible for the initial formulation of the plan.
- 12 2. There is a risk that the Panel's strong emphasis on data-collection, formulation
13 of a class definition, standard-setting, training and monitoring—all of which
14 are understandable and valid objectives—might blur or interfere with the more
15 pressing and straightforward objective of providing more and better services
16 to the plaintiff class. The County's Plan is deficient in certain respects, some
17 of which are described below, but at least it is a Plan that is now functional.
18 The County's Plan will have to be modified, but in the meantime the public
19 resources available to address the acute needs of these foster children will not
20 be dissipated or delayed by further efforts to formulate a theoretically better
21 plan. There is merit to the old adage that "one should not let the perfect be the
22 enemy of the good." In any event, the County's Plan can be modified and
23 improved after a sufficient period of implementation and experimentation.

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26 ¹ For that reason, the Court *sua sponte* hereby extends the Panel's appointment
27 beyond its current expiration date for an additional 18 months and correspondingly
28 extends the Court's jurisdiction indefinitely.

² Docket No. 398.

- 1 5. The County should in good faith evaluate any specific proposal from the Panel
2 to obtain additional or new funding and the County should seek to obtain such
3 funding unless it (the County) demonstrates good cause not to do so. SCANNED
- 4 6. The County should invite and in good faith—and promptly!—evaluate
5 specific proposals from the Panel to expand and improve the IBHIS system
6 *before* the County expends money implementing the system (assuming Board
7 approval). If there is uncertainty as to the legal effect of possibly applicable
8 federal rules, the County and the Panel should collaborate on how to comply
9 with those rules within the context of IBHIS or how to seek to have the rules
10 re-interpreted or waived. Together the Panel and the County should negotiate
11 methods to track service delivery and outcomes *before* 2008.
- 12 7. The Panel should be invited to collaborate with the U.C.L.A. School of
13 Medicine in devising a Quality Service Review that “yields measureable data
14 on a comprehensive set of performance indicators.” *See* Reply at 16:3.
- 15 8. Perhaps the most fundamental deficiency in the County’s Plan, as reflected
16 generally in the Proposed Order the County filed on this motion, is that the
17 County would have this Court deem it to be in compliance with the Settlement
18 Agreement upon the County achieving unacceptably low targets. For
19 example, the Court finds little value or merit in assessing progress by
20 comparing the percentage of children in congregate care in Los Angeles
21 County to the levels in Philadelphia, Chicago and New York. Similarly, a
22 10% increase in “wraparound” or intensive, home-based services is strikingly
23 modest—to the point of being far from compliance. Again, to define
24 compliance as requiring that only at least 80 children are placed in treatment
25 foster care is flatly impermissible; the Panel’s proposed corrective action of
26 500 treatment foster care slots in place by July 1, 2007, is far closer to the
27 mark. Next, to posit compliance upon formal assessments of only 80% of the
28 children who have actually been “screened” positively—*i.e.*, have been

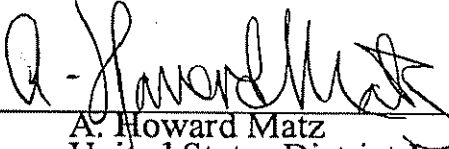
1 identified as in need of the agreed-to and legally-required mental health
2 services—makes no sense; why would anything less than 100% be sufficient?
3

4 **FURTHER PROCEEDINGS**

5 The Court currently contemplates requiring the foregoing “observations” to
6 be the bases for modification of the County’s Plan. The Court will hold a status
7 conference on August 16, 2006, at 3:00 p.m. Dr. Vincent and other members of the
8 Panel are encouraged to attend. By not later than July 31, 2006, the
9 parties—including the State Defendants—shall file separate responses to this Order
10 setting forth their respective positions as to these contemplated provisions. The
11 parties’ positions, which should not exceed ten pages and may not contain
12 attachments, shall explicitly take into account relevant developments since the last
13 of the motion papers was filed. (Plaintiffs’ Reply was filed on March 6, 2006.) In
14 addition to commenting on this Order, the parties shall comment on the unsolicited
15 “recommendations and information for consideration” that the Court received in the
16 attached letter from the California Institute for Mental Health, dated May 24, 2006.

17
18 IT IS SO ORDERED.

19
20 Dated: June 15, 2006

21 
22 A. Howard Matz
23 United States District Judge
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California Institute for Mental Health

May 24, 2006

Hon. Judge A. Howard Matz
Courtroom 14
314 N Spring St
Los Angeles Ca 90012 - 2702

Re: Katie A. v. Bonta
Case No. CV02-5662 AHM (SHx)

Dear Hon. Judge Matz:

I am writing on behalf of the California Institute for Mental Health (CiMH) regarding the Katie A. v. Bonta preliminary injunction and legal process under way. CiMH is not taking a stance nor do we have an opinion regarding the merits of the case; however, we would like to offer recommendations and information for consideration should the process result in the expansion of therapeutic foster care and wraparound services. Specifically, CiMH recommends that the following two principles guide this process should it advance:

1. The expansion of therapeutic foster care and wraparound should be limited to models that have high levels of credible research supporting their effectiveness. Specifically, the expansion of therapeutic foster care in California should be limited to implementation of Multidimensional Treatment Foster Care (MTFC), until research identifies other effective models. Wraparound, consistent with the second principle, should be implemented with fidelity (or strong adherence to the model) as measured by tools under development through the Wraparound Evaluation and Research Team (WERT).
2. Implementation of therapeutic foster care and wraparound should be high fidelity -- or model adherent - requiring a well-planned, orderly, staged process that insures that all children/families, in all counties, have access to high quality services.

Established in 1993 by the California Mental Health Directors Association (CMHDA), CiMH is an independent private non-profit agency. CiMH works closely with CMHDA, the California Department of Mental Health, consumers, families, private providers, and other stakeholders to provide training, technical assistance, evaluation, research and policy development in support of the state's public mental health system. Among its many areas of focus, CiMH has been a national and state leader in the areas of Children's System of Care, wraparound and evidence-based practices implementation for children, youth and families.

Expanding therapeutic foster care and wraparound services for children and youth who would otherwise be served in group homes and other forms of institutional care, holds significant promise for improving outcomes for children and families. However, requiring these services be available does not insure that the services will be provided in a manner that is effective or that results in improvements for children and families. There are important considerations regarding the selection and implementation of these service models to take into account for insuring improved outcomes for children and families.

Taking advantage of lessons from past service reform efforts, and an understanding of the strengths and weaknesses of existing service systems, will assure that the impact of these efforts result in optimal outcomes for children and families. Absent a conscious decision to do so, we can expect a resolution requiring more therapeutic foster care and wraparound services to result in the rapid but uneven growth

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of services, with commensurate expenditure of money and resources, which are inconsistent in quality and ultimately result in highly variable outcomes.

In light of this we recommend that the following two principles serve as guides when structuring the implementation of a potential settlement of the Katie A. v. Bonta' lawsuit.

Principle #1: The introduction of therapeutic foster care and wraparound should be limited to models that have high levels of credible research supporting their effectiveness.

Over the last two decades a growing body of scientific research has demonstrated that some mental health and social service practices are much more effective than others. Unfortunately, as noted in the Surgeon General's Report on Mental Health and other authorities, practices proven to be effective are rarely available in public service systems. Moreover, most services offered in the private and public sectors are untested and/or may be based upon practices research has found to be less effective than alternatives, ineffective or, in some cases, detrimental.

Given this, CiMH and others advocate for the adoption of evidence-based practices. There is no single agreed upon definition of "evidence-based practices" or what qualifies a practice as "evidence-based." However, most definitions are primarily based upon the strength of the scientific support for the effectiveness of the practice. The highest level of scientific research includes strong research design – experimental design – with random clinical trials.

CiMH recommends that when implementing new services, communities should first consider practices that are supported by the strongest level of research. These practices offer the most assurance that, when implemented properly, children and families will experience the strongest positive outcomes.

The Evidence-base and Therapeutic Foster Care

Therapeutic foster care is a generic term describing a variety of models that provide additional supports and services to children placed in foster care. Most therapeutic foster care models are untested. Only one model, Multidimensional Treatment Foster Care (MTFC), has strong research supporting its effectiveness, including documentation of outcomes superior to group care and other therapeutic foster care models. MTFC-A is an evidence-based alternative to group home care, serving adolescents (12 – 18 yrs) who are in the juvenile justice, child welfare and mental health systems. MTFC-L and MTFC-P – are adaptations of the model for children 6-12 years old and 0-6 years old respectively, which have growing research support for their effectiveness. MTFC has been successfully transported to a variety of communities, including 5 California sites supported by CiMH and the Oregon Social Learning Center. Implementation efforts have focused upon ethnic minority youth as they are overrepresented in the both the Child Welfare and Juvenile Justice systems. This practice focuses on issues that are important to ethnically diverse populations such as disparities in out-of-home placement, incarceration and access to quality mental health services. CiMH maintains that *the expansion of therapeutic foster care in California should be limited to implementation of MTFC, until research identifies other effective models.*

The Evidence-base and Wraparound

National and state studies place wraparound services at the level of a promising practice, with outcomes that include improved continuity of care, higher client satisfaction than usual care and reductions in group home placement and inpatient utilization. However, Wraparound has not, through controlled research, demonstrated consistent improvements, as compared to usual care, in outcomes related to child and family well-being. Additionally, wraparound is often more expensive than usual care. These findings and new research underway suggest that the quality of wraparound implementation likely has a significant impact upon outcomes, with improved results when services are delivered in a standardized (model adherent) manner. Therefore, CiMH recommends that expansion of wraparound services be guided by *fidelity (or strong adherence to the model) as measured by tools under development through the Wraparound Evaluation and Research Team, and as outlined in Principle #2.*

Principle # 2: Implementation of therapeutic foster care and wraparound should be high fidelity – or model adherent - requiring a well-planned, orderly, staged process that insures that all children/families, in all counties, have access to high quality services.

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Evidence-based practices replicated in communities will achieve outcomes similar to those documented in research only if the practice is implemented as designed – with adherence to the model. Research increasingly supports the finding that services delivered without high fidelity fail to achieve positive outcomes and in some cases have resulted in negative outcomes. The traditional approach to implementing and sustaining new mental health and social service practices (for example, staff participation in one time or periodic training) is inadequate to support delivery of model adherent services.

CiMH is currently supporting the model adherent implementation of seven evidence-based practices in over 20 counties in California, representing more than fifty service sites. Our experience, consistent with national research, suggests that counties and agencies require ongoing clinical and administrative training and support to insure sustainable model adherent programs, and that these efforts require many more resources – funding as well as staff time – than is customary.

The high fidelity implementation of MTFC and Wraparound will require a much different approach to service expansion than California and most other jurisdictions have used in the past. It will require attention to a variety of new processes and a considerable shift in resources to new types of training, coaching, and staff supervision. Infrastructure development to support the ongoing monitoring of service fidelity and client outcomes will be essential as well. *Most importantly this approach requires that practices are monitored to assure that children and families receive the services as designed, and that outcomes – particularly for children and youth from diverse cultural ethnic communities, gender, and across age ranges - are monitored to assure child and family goals are achieved.*

It will be critical to balance the competing need to *implement quickly (everywhere at once, as soon as possible)* with the need to *implement well (an efficient, staged and orderly process resulting in high quality services)*. In the past, reform efforts have focused on increasing access to care without sufficient attention to quality, and in turn cost effectiveness. Access to low quality services wastes limited financial resources and misuses an overburdened workforce. Most importantly lower quality services that are ineffective have profoundly negative impacts upon children and families who enter treatment hopeful that their lives will improve, but leave believing the system is of no assistance and that they may be beyond help. A more thorough approach to service expansion, focusing on access to and quality of care, is necessary to fully achieve improved outcomes for children and families.

High quality implementation of MTFC and Wraparound will challenge California, requiring new levels of investment in planning, training, technical assistance, staff supervision and service monitoring. This process will ensure that resources are maximized, and that children and families achieve positive results. A well-planned, orderly, staged approach to growth of these services across the state may appear to slow access; however, we believe the opposite may be true. Experience with service expansion has consistently shown that initiating these processes with little guidance or structure results in uneven implementation – variable quantity and quality – across California's fifty eight counties. The planning and support necessary to ensure the high fidelity adoption of MTFC and Wraparound may, in the long run, assure a more consistent and timely expansion of therapeutic foster care and wraparound statewide than a less structured approach. We expect a staged approach to result in a greater number of children/families having access to MTFC and wraparound sooner. Alternatively, a rushed approach will likely lead to some children in some counties having access to services soon, while other children in other counties fail to gain access even after many years.

CIMH understands that the planning associated with the potential settlement must address levels of complexity beyond those reviewed in this correspondence; however, we believe that the inclusion the principles and strategies outlined, will ultimately improve this process.

Thank you for considering this correspondence. Please contact CIMH if you have any questions or comments about its contents. The Institute is extremely interested in assisting with the implementation of a potential settlement that results from the Katie A v. Bonta' lawsuit.

Sincerely,



Bill Carter, LCSW
CIMH Deputy Director



Sandra Naylor Goodwin, PhD
CIMH Executive Director

CC: Katie A. et al., Plaintiff
Diana Bonta' et al., Defendant

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