



## LA County Fails To Meet The Mental Health Needs Of Foster Children

Katie A. Advisory Panel to Continue for Another Year

### Jennifer's Story

Each day thousands of foster children in California are needlessly confined in locked hospital wards and other institutions, or placed in large group homes because they cannot get the mental health services they are entitled to under federal law.

Jennifer, a Central Valley 15 year-old, is one of these children. She spent 18 months in the foster care system being shunted through 20 different placements, including nine residential placements and 11 psychiatric hospitals. One of her placements was at a group home six hours' drive from where her mother lived. Rather than helping Jennifer, each new placement contributed to her distress: in one she was beaten by older girls and in another she ran away and was raped while she wandered the streets. She continually attempted suicide and cut her arms with a knife and a razor. Despite this history and a diagnosis of severe depression and other serious mental disorders, the local child welfare agency eventually told her mother that there was nothing they could do for her and that the only way to get help was to call the police. Jennifer was entitled to appropriate health care, but instead she is in jail.

### By Meg Wilkinson and Patrick Gardner

In May 2003, Los Angeles County and the Los Angeles County Department of Children and Family Services (DCFS) entered a settlement agreement with the plaintiffs in *Katie A. v. Bontá*. The lawsuit was brought on behalf of California's foster children with unmet mental health needs. The *Katie A.* settlement agreement required the County and DCFS to improve mental health services and placement stability for children in the department's custody, and also created an expert Advisory Panel to monitor and report on DCFS's efforts.

The Panel's fifth and most recent report, issued August 16, 2005, finds that Los Angeles County has failed to adequately address the mental health needs of children in its care. DCFS has initiated certain limited reforms, and is planning more. The Panel concluded, however, "a much broader system improvement strategy is needed to assure for class members the provision of necessary mental health services, safety, permanence and stability, and care and services consistent with good mental health and child welfare practice."<sup>1</sup>

### Case Background

In July 2002, a group of plaintiff children filed the *Katie A.* lawsuit

against the California Department of Health Services (DHS), the California Department of Social Services (DSS), Los Angeles County, and the Los Angeles County DCFS in federal court in Los Angeles.<sup>2</sup> The suit was filed on behalf of children who were in, or at risk of being in, foster care in California and who had behavioral, emotional, or psychiatric needs requiring individualized mental health services.

The complaint alleged that the defendants' "systematic failure" to provide these services had seriously harmed foster children with mental health needs.<sup>3</sup> The defendants' failure to identify children's needs and provide appropriate services resulted

<sup>1</sup> *Katie A.* Advisory Panel, Fifth Report to the Court 24 (August 16, 2005).

<sup>2</sup> *Katie A. et al v. Diana Bontá*, No. 02-05662 (C.D. Cal. filed July 18, 2002).

<sup>3</sup> First Amended Complaint at 52-54, *Katie A. v. Bontá*, No. 02-05662 (C.D. Cal. Dec. 20, 2002).

in multiple placements and over-reliance on placements in group homes and hospitals, causing further harm.<sup>4</sup> The plaintiffs sought declaratory and injunctive relief, including the closure of MacLaren Children's Center in El Monte, CA. The Center, an "emergency shelter," was particularly egregious in its failure to meet the mental health needs of DCFS children in its care, according to the plaintiffs.

### Obligations Under the Settlement Agreement

Within a year of the filing of the lawsuit, Los Angeles County and DCFS entered a settlement agreement with the plaintiffs that required them to meet four main objectives. They agreed to make sure members of the subclass of Los Angeles County children in or at risk of entering DCFS custody:

- Promptly receive necessary, individualized mental health services in their own home, a family setting, or the most homelike setting appropriate to their needs;
- Receive the care and services needed to prevent removal from their families or, when keeping them in the home is impossible, to facilitate reunification and to meet their needs for safety, permanence, and stability;
- Be afforded stability in their placements, whenever possible, since multiple placements are harmful to children and are disruptive of family contact, mental health treatment, and the provision of other services; and
- Receive care and services consistent with good child welfare and mental health practice and the requirements of federal and state law.<sup>5</sup>

In addition, the agreement lists seven specific measures the defendants must implement as part of fulfilling these objectives. They must:

1. Immediately address the service and permanence needs of the five named plaintiffs;

2. Improve the consistency of DCFS' decision making through the implementation of "Structured Decision Making" (SDM). (SDM is meant to guide social workers' decisions to produce more consistent outcomes in a variety of cases);
3. Expand wraparound services (services designed to allow children with mental health needs to avoid restrictive congregate placements by providing them with a variety of strengths-based, individualized treatment in the community);
4. Implement "Team Decision Making" (TDM) at significant decision points for a child and his/her family. (TDM uses trained facilitators to coordinate meetings between those involved in children's lives when they enter custody);
5. Expand the use of "Family Group Decision Making" (FGDM). (FGDM involves families in decisions about their children's care);
6. Ensure that the needs of class members for mental health services are identified and that such services are provided; and
7. Enhance permanency planning, increase placement stability, and provide more individualized, community-based emergency and other foster care services to foster children.<sup>6</sup>

In addition, the county agreed to close MacLaren Children's Center, which it has since done.

As part of the agreement, the parties selected an expert advisory panel charged with assisting and overseeing the defendants' steps toward compliance.<sup>7</sup> The Panel must also identify any "state policies or funding mechanisms" that block compliance with the agreement, and make recommendations on how to change them.<sup>8</sup> Finally, the Panel is responsible for issuing reports on its findings and recommendations.<sup>9</sup> In accordance with the agreement, the Panel has now issued its Fifth Report, evaluating the extent

of DCFS's compliance with the settlement agreement after two years.<sup>10</sup>

### The Advisory Panel's Evaluation of DCFS Compliance

In its most recent report, the Panel finds that DCFS has not complied with the settlement agreement. Although DCFS has undertaken efforts to fulfill most of the seven specific measures required by the settlement, it has not met any of the settlement agreement's four overarching objectives, which are at the heart of the agreement.

Following is a summary of the four objectives:

- **Provision of Mental Health Services in the Most Homelike Setting.** The settlement agreement recognizes that it is best for children with mental health needs to receive services in their homes and communities, not in congregate placements such as group homes and hospitals. Currently, many mental health services are provided on an outpatient basis, not in a child's home. These services usually are not comprehensive enough to meet a child's needs and are not provided for a long enough period.<sup>11</sup>

Many children in DCFS custody must stay in congregate placements because services are not available to keep them in more homelike settings. The Panel has identified the placement of young children in group homes as an especially obvious indicator of the county's failure to meet the first objective. In its Third Report, the Panel undertook a special study of young children in group homes. It found that in some cases, children could have remained at home if intensive mental health services had been available.<sup>12</sup> While DCFS developed a plan to reduce the number of younger children in group homes in response to the Panel's earlier report, the Panel's most

<sup>4</sup> *Id.* 47, 52-53.

<sup>6</sup> *Id.* 7.

<sup>5</sup> Settlement Agreement at 6, Katie A. v. Bontá, No. 02-05662 (C.D. Cal. May 2003).

<sup>7</sup> *Id.* 15.

<sup>8</sup> *Id.* 11.

<sup>9</sup> *Id.* 16.

<sup>10</sup> *Id.* 19.

<sup>11</sup> Katie A. Advisory Panel, Fifth Report to the Court 35 (August 16, 2005).

<sup>12</sup> Katie A. Advisory Panel, Third Report to the Court 27 (Sept. 7, 2004).

recent report found that DCFS has made little progress toward this goal.<sup>13</sup>

DCFS has modestly expanded wraparound services to serve about 400<sup>14</sup> children, but the Panel continues to question the quality of wraparound services.<sup>15</sup> More broadly, the Department has made little progress in expanding mental health services for the thousands of children in the class who need services in order to live in less restrictive settings, according to the Panel's Fifth Report.<sup>16</sup> Absent such an expansion, the Panel concluded, the county cannot achieve the goals of the agreement. According to the Panel, there is no detailed plan to "expand the availability of mental health services to meet identified needs."<sup>17</sup>

- **Provision of Care and Services to Prevent Removal or Hasten Reunification.** The inadequacy of Los Angeles' home-based mental health services contributes to children being unnecessarily removed from and kept out of their homes. In general, it is desirable to keep children with their families as long as this may be accomplished safely. Keeping children with mental health needs in their own homes is particularly challenging because families are often not equipped to handle those needs on their own. In many cases, DCFS has found it simpler to put these children in group homes or other high-level placements than to work with families to support these children in their own homes. Expansion of in-home mental health services is essential to meeting this goal, as well as the first objective. Notwithstanding, the Panel concluded in its Fifth Report, that "[a] specific plan for the major expansion of intensive home based services for

class members...has not been completed."<sup>18</sup>

- **Enhancement of Placement Stability.** The high number of placements experienced by children in DCFS custody is a problem across the board, but particularly for children with mental health needs. Because these children create special challenges and can be unpredictable to work with, they may bounce from placement to placement if their needs are never properly addressed. Expansion of mental health services is essential to reduce the number of placements. Children with stable placements will not experience separation issues and other traumas associated with moving to a new home, minimizing further harm to their mental health.<sup>19</sup>

DCFS has proposed some plans for enhancing placement stability, but they are in the beginning stages. The proposed plans include: Points of Engagement—earlier intervention with lower-risk children to prevent removal; Concurrent Planning Redesign—a systematic change—which aims to begin the adoption process sooner; and Permanency Partners Program, which matches older youth with adult mentors.<sup>20</sup>

None of these plans are mentioned in earlier Panel reports. Indeed, while expressing optimism that these plans may be effective, the Panel found that their implementation is too recent to permit evaluation of how they may impact the class.<sup>21</sup>

The Panel noted that another important aspect of enhancing placement stability is improving DCFS's decision making in individual cases. The Panel has repeatedly highlighted the need for case planning and management to occur throughout cases instead of in response to crises. Three specific requirements

in the settlement agreement address this area by mandating the implementation and expansion of three types of decision-making strategies: Structured Decision Making (SDM), Team Decision Making (TDM), and Family Group Decision Making (FGDM). (*These terms are explained on p.2.*)

While the Panel's most recent report finds that DCFS has technically fulfilled the requirements to expand use of these decision-making strategies, it also questions the efficacy of these efforts. Beginning with its First Report, the Panel has consistently expressed doubts that either SDM or TDM would help the Department meet the agreement's goals,<sup>22</sup> and has also said that families are not sufficiently involved in the decision making process.<sup>23</sup> Rather than implementing the three types of decision making separately, the Panel argues that the best practices of each should be integrated into one model. While DCFS may have fulfilled the settlement agreement's specific requirements, its current decision making models are not ideal for ensuring better outcomes for the plaintiffs.

- **Provision of Care and Services Consistent with Best Practices and the Law.** The Panel has repeatedly criticized DCFS's training programs, particularly for new workers,<sup>24</sup> citing the following problems:
  - Training for new workers concentrates on providing them with information, instead of developing their skills to deal with a variety of situations.<sup>25</sup>
  - Topics do not build upon one another, and a disproportionate amount of time is devoted to topics that are less important. For example, the same amount of time is allotted for filling out a court report

<sup>13</sup> Fifth Report at 29.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 8.

<sup>16</sup> *Id.* at 29.

<sup>17</sup> *Id.* At 6.

<sup>18</sup> Fifth Report at 20.

<sup>19</sup> See Katie A. Advisory Panel, Fourth Report to the Court 21 (Feb. 28, 2005).

<sup>20</sup> Fifth Report at 15-16.

<sup>21</sup> *Id.*

<sup>22</sup> Katie A. Advisory Panel, First Report to the Court 9 (Jan. 13, 2004).

<sup>23</sup> See First Report at 10; Fourth Report at 13.

<sup>24</sup> Fifth Report at 19.

<sup>25</sup> Third Report at 38.

as for dealing with issues such as attachment, loss, and placement.<sup>26</sup>

- New workers must assume a caseload quickly, without receiving sufficient training to prepare them for this responsibility.<sup>27</sup>
- There is no effective mentoring system in place to help newer staff learn from more senior staff.<sup>28</sup>

DCFS has made little progress toward improving training. In the past, it has maintained that changing its pre-service training program is outside the scope of the settlement agreement.<sup>29</sup> While the Panel's fifth report indicates that DCFS has now begun an initiative to improve training, the Panel has not been provided any information about this effort.<sup>30</sup>

### Obstacles to DCFS Compliance

There are several key reasons why DCFS has failed to comply with the settlement agreement. They include:

- **DCFS's Inability to Track the Class.** A prerequisite for the Panel's evaluation of the Department's compliance with the agreement is the ability to track outcomes for the class. However, DCFS has been unable to accurately identify the children who comprise the class. The class is not limited to all children receiving mental health services, because many children with mental health needs have not been properly assessed, and even those that have often do not receive services.<sup>31</sup> DCFS has implemented some measures to improve mental health screening of children in its care, which the settlement agreement specifically requires. For example, DCFS has developed a system of "hubs" that aims to provide medical and mental health examinations as soon as a child enters care.

The Department has not been able to show, however, what impact hubs and other measures have had on the class.<sup>32</sup>

Recognizing that DCFS cannot currently identify the full class, the Panel and DCFS have agreed on a proxy or minimum class, comprised of groups of children that are categorically members of the class. These groups include children in foster homes for children with special emotional and behavioral needs, children in certain high-level therapeutic placements, and children already receiving comprehensive mental health services.<sup>33</sup> However, the Fifth Report finds that DCFS still must develop a way to accurately identify all class members.<sup>34</sup>

Another challenge to evaluating program reforms is the county's inability to produce the data necessary to track outcomes for class members. This problem is mainly due to lack of current data from the Department of Mental Health (DMH) on children in DCFS care.<sup>35</sup> When such data becomes available, it will be useful primarily for tracking long-term outcomes for the class. The Panel has repeatedly insisted on the need for DCFS to develop a "qualitative review" process that would provide immediate feedback on how class members are doing.<sup>36</sup> Qualitative reviews would examine specific cases and allow DCFS to determine not only whether its measures have been effective, but also the reasons *why* or *why not*.<sup>37</sup> DCFS has objected to a Panel recommendation for the development of a process that provides such feedback, but has not proposed an alternative.<sup>38</sup> With insufficient data to track DCFS's long-term progress and no way to track immediate progress, the Panel does not have enough information to judge

whether DCFS has fulfilled its obligations under the settlement agreement.

- **Funding Difficulties.** Another fundamental obstacle to DCFS's implementation of the four objectives is the lack of funding available to support its efforts. To some extent, this difficulty exists because of the low level of funding for social services in general. However, the Panel has focused on DCFS's failure to seek alternate funding or to make the most efficient use of available funds. For example, it places children in group homes even when providing services to keep them at home would cost less.<sup>39</sup> It also does not claim all available federal funds<sup>40</sup>, and has been slow to expand federal Early Periodic Screening, Diagnosis and Treatment (EPSDT) funded services.<sup>41</sup> Although the Panel has repeatedly urged the county to adopt a comprehensive funding strategy, the Panel's Fifth Report finds that it still does not have a plan on how to fund required changes.<sup>42</sup>
  - **Poor Communication Between DCFS and the Panel.** DCFS's poor communication with the Panel has impeded progress. In its Third Report, the Panel noted that the Department had implemented several new initiatives without informing the Panel.<sup>43</sup> The Panel also expressed frustration that DCFS had failed to respond to many of the Panel's findings and recommendations.<sup>44</sup> Although communication has improved, it continues to be a problem. Indeed, in its Fifth Report, the Panel cites DCFS's failure to keep it informed as one of the justifications for continuing the Panel's monitoring.<sup>45</sup>
- A difference in focus between the Panel and DCFS also impacts

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 14.

<sup>28</sup> See *Id.* at 35.

<sup>29</sup> Fifth Report at 19.

<sup>30</sup> *Id.*

<sup>31</sup> Katie A. Advisory Panel, Second Report to the Court 18 (May 30, 2004).

<sup>32</sup> Fifth Report at 12.

<sup>33</sup> *Id.* at 17-18.

<sup>34</sup> *Id.* at 40.

<sup>35</sup> *Id.* at 39.

<sup>36</sup> See Second Report at 16; Third Report at 8; *Id.*

<sup>37</sup> Fifth Report at 57.

<sup>38</sup> *Id.* at 39.

<sup>39</sup> Fourth Report at 8.

<sup>40</sup> Fifth Report at 19.

<sup>41</sup> *Id.* at 29.

<sup>42</sup> *Id.* at 19.

<sup>43</sup> Third Report at 43.

<sup>44</sup> *Id.* at 7-8.

<sup>45</sup> Fifth Report at 19.

the Department's progress in complying with the settlement agreement. While the settlement agreement requires attention to children with mental health needs, the Panel reports that DCFS has concentrated its efforts on broad system changes.<sup>46</sup> Because the Department's efforts to fulfill the settlement agreement are "secondary to its broader child welfare improvement agenda," it has not developed a detailed plan for complying with the settlement agreement.<sup>47</sup> In turn, the absence of such a plan prevents the panel from providing effective support to DCFS and the county.

### Agreement to Extend the Panel

Los Angeles County's limited progress in meeting the settlement agreement's terms has led the parties to agree on the need to continue the Panel's oversight for another year. In response to the draft of the Panel's Fifth Report, on July 22, 2005, Los Angeles County released a new draft plan for DCFS's implementation of the settlement agreement.<sup>48</sup> The plan is in response to the Panel's Fifth Report Draft, and outlines the actions that DCFS plans to take. These actions include expanding mental health services, improving policies and practices for caseworkers and other "front line" workers, and reducing group home placements.<sup>49</sup>

Plaintiffs contend, however, that this plan does not go nearly far enough, and represents the same failures that they have seen for the last two years. The plan lacks substance, and does not include any specifics on what new services will be created, and

where those services will be available. The plaintiffs argue that in order for the county to successfully implement the Settlement Agreement, it must deliver more comprehensive action, including clear and effective strategies for:

- Ensuring class members' access to intensive home- and community-based mental health services, including wraparound services and therapeutic foster care;
- Ending the misuse of high-cost congregate care for class members;
- Ensuring class members age 8 and younger are served in families and not in group care;
- Minimizing the placement instability of class members;
- Preventing class members from exiting to the juvenile justice system; and
- Ensuring the participation of the County Department of Mental Health in resolving local barriers to *Katie A.* settlement implementation.

Until the county is able to deliver a specific, comprehensive plan detailing how it will meet the requirements of the settlement agreement, Los Angeles's foster children with serious mental health needs will continue to suffer.

*Questions or comments regarding this article should be sent to Patrick Gardner at [pgardner@youthlaw.org](mailto:pgardner@youthlaw.org).*

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### Background on the Case, *Katie A. v. Bonta*

According to California's Little Hoover Commission, nearly 70 percent of the state's 85,268 foster children will experience a mental health problem. Unfortunately, tens of thousands of these children cannot get the mental health services they need. Faced with inadequate services and supports, children suffer multiple placements, failure in school, and physical harm—often including suicide, and frequently end up as prisoners in the delinquency system.

In large part, these harms result from the state of California's failure to provide appropriate mental health care to these children. In November 2003, the National Center for Youth Law teamed up with the Western Center on Law and Poverty, Protection & Advocacy, Inc., the Bazelon Center for Mental Health Law, the ACLU of Southern California, and the law firm of Heller Ehrman LLP to prod the state into compliance. The case, *Katie A. v. Bonta*, names the county of Los Angeles and the heads of California's health and social services agencies as defendants. Los Angeles County settled with plaintiffs in May of 2003.

After completing many months of discovery, the plaintiffs filed their motion for preliminary injunction on September 9, 2005, against the state defendants. The plaintiffs' motion seeks an order to compel the California Departments of Health Services, Social Services, and Mental Health to make home- and community-based individualized mental health services available to all class members on a consistent statewide basis through the Medi-Cal program or other means. The plaintiffs demand that the defendants develop a plan to provide appropriate services within 30 days, and provide actual services within 60 days. The motion was heard on October 31, 2005. A decision on the motion is pending.

<sup>46</sup> *Id.* at 6.

<sup>47</sup> *Id.*

<sup>48</sup> Countywide Specialized Foster Care Mental Health Services Plan (DRAFT), July 22, 2005.

<sup>49</sup> *Id.*