

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

EMILY Q. et al.,)	CASE NO. CV 98-4181 AHM (AJWx)
)	
Plaintiffs,)	FIRST QUARTERLY REPORT
)	IN RESPONSE TO COURT'S
)	ORDER APPOINTING SPECIAL
)	MASTER FEBURARY 21, 2008
)	
v.)	
)	Honorable A. Howard Matz
DIANA BONTA,)	Courtroom 14
)	
Defendant.)	
)	

1 **Introduction**

2 This report is the first report submitted pursuant to the Court's "Order Appointing Special
3 Master" of February 21, 2008. The report covers the time period from February 22, 2008
4 through June 26, 2008. During this period of time, the Special Master implemented Phase 1 of
5 his Therapeutic Behavioral Services (TBS) planning approach, Foundation Building, and began
6 initial work on Phase II, Design, of the Three Phase Work Plan submitted to the Court on March
7 11, 2008.

8 The Foundation Building Phase of the plan required bringing together all the conflicted
9 parties and key stakeholders to create accessible, effective and sustained TBS for children and

1 their families in the Emily Q class in California. To this end, a total of fifteen individuals
2 representing the parties and key stakeholders have met together twelve times. The following is a
3 list of representatives during these meetings (See Appendix I for a complete list of participant
4 names and titles):

- 5 • Department of Mental Health: Assistant Deputy Director, Medi-Cal Chief, and Chief
6 and Senior Counsels;
- 7 • Department of Health Care Services: Program Chief and Senior Counsel;
- 8 • Representing the Class: ACLU Foundation of Southern California, Senior Counsel;
9 and Mental Health Advocacy Services, Executive Director;
- 10 • Department of Justice, Office of the Attorney General: Deputy Attorneys General;
- 11 • California Mental Health Directors' Association (CMHDA): Association Deputy
12 Director, and Association President who also is the Mental Health Director for Santa
13 Clara County;
- 14 • Representing the Class perspective: a program manager from a Peer-to-Peer Support
15 program who also is the parent of a child who has been in the public mental health
16 system, and a private sector mental health practitioner who delivers TBS to children
17 and families through county contracts.
- 18 • On loan from the State Department of Alcohol and Drugs: former Children's Mental
19 Health Chief, State Department of Mental Health.

20 This core TBS Work Group has met weekly in Sacramento for the past three months,
21 completing Phase 1, Foundation Building, of the Interests Based Decision Making process, and
22 beginning Phase 2, Plan Design. The Work Group has reached consensus regarding four key
23 elements of the proposed TBS Plan, which should be substantially, if not fully, completed by
24 October 1, 2008. Elements of the developing plan are summarized later in this report. Over the
25 past three months, Work Group members have completed the transition from "plaintiffs versus
26 defendants" to "parties of mutual interest" and are working together cooperatively to reach a
27 stipulated agreement for a TBS plan.

28 In addition to the Work Group planning sessions, the Special Master has held meetings
29 and conversations with other key stakeholders in the TBS process, including two learning
30 conversations with private not-for-profit TBS providers, one in Sacramento for northern county
31 and the other in Los Angeles for southern county providers, both hosted by the California

1 Alliance of Children and Family Services (the majority of TBS is provided by private providers
2 under contract with county mental health departments); two focused discussions with county
3 mental health children's leadership hosted by CMHDA; a meeting with CMHDA Children's
4 Committee members who represent California county children's Deputy Directors and Program
5 Chiefs; and a conference call with county mental health TBS Coordinators.

6 The TBS Work Group parties have shown remarkable commitment to meeting the Court
7 TBS plan requirements. State representatives have shown leadership, flexibility, and openness to
8 new opportunities. Class representatives have exercised restraint regarding alternatives,
9 expanded their understanding of the workings of the service system, focused on the real above
10 the ideal, and brought encouragement and optimism into the planning process. The Practitioner
11 representative has educated the others regarding the day-to-day operations of TBS service
12 delivery at the local level. The Parent representative has helped maintain the focus on children
13 and families, and on the real consequences that the emerging TBS plan will have on kids and
14 families. The County representatives have described service delivery mechanisms at the county
15 level, articulated the interests of county government in administering state and federal programs,
16 and helped the group understand that true change at the service delivery level requires achieving
17 a balance between needs and resources. The overall competence of the Work Group is
18 noteworthy and I have confidence that they can move to successful development of a TBS plan
19 proposal.

20
21 **Steps taken to achieve the objectives set forth in Paragraph 14 of the Court Order**

22 *a. The Special Master shall facilitate a joint stipulation by the parties to specify a minimum TBS*
23 *utilization rate, or differing rates by county. If the parties cannot agree to a stipulated rate or*
24 *rates, the Special Master shall recommend a rate or rates to the Court for adoption.*

25 The Special Master has spent considerable time exploring the various parties' concerns
26 regarding a utilization rate for TBS. There are multiple points of view, and two key
27 considerations are emerging. First, there is considerable resistance at the county service delivery
28 level to setting a target TBS utilization rate that would pressure counties to use TBS even when
29 other and better alternatives more suitable to the needs of the child and family are available;
30 county representatives argue that a fixed target rate would result in inappropriate use of TBS
31 services for the sole purpose of compliance, rather than for the benefit of the child and family.

1 Additionally, two key subgroups of the class – Child Welfare Services (CWS) dependents and
2 Probation wards – are not under the authority of mental health; neither the state nor county
3 mental health agencies have authority to require CWS or probation agencies to bring forward to
4 county mental health for evaluation children who are being considered for or are exiting RCL-12
5 and above group homes, or who are at risk of acute psychiatric hospitalization. Categorical
6 structure and funding of state and local government has resulted in separate departments,
7 authority and funding among mental health, child welfare services and probation. This siloed
8 model of service delivery has had the unintended consequence of creating structural and
9 operational barriers at both the state and county levels that prevent any statewide systematic and
10 sustained effort to match children in the TBS class who are outside the authority of mental health
11 with the TBS services they need. Because of this, a TBS utilization rate imposed under the
12 Emily Q matter would have no influence over CWS or probation at the county level and would
13 not necessarily result in strengthening the mental health agencies' ability to bring children from
14 CWS or probation into TBS services.

15 Second, due to significant changes in the TBS administrative process currently being
16 proposed by the Department of Mental Health (changes that are emerging through the TBS Work
17 Group planning process), the complex administrative burden of TBS documentation will be
18 lifted from the counties and providers, which by itself is expected to result in significant
19 increases in TBS utilization at the county level. It is very possible that this reduced
20 administrative burden (in combination with other important developments also emerging through
21 the TBS Work Group planning process) may accomplish the intent of a utilization rate by
22 increasing county participation in the program statewide. I believe there will be significant
23 opportunity for increased TBS utilization, and there are provisions within the TBS Work Group
24 planning options regarding a TBS accountability structure and the role of state and local
25 interagency structures that will help resolve utilization issues and provide a framework to
26 identify performance benchmarks regarding utilization.

27 In addition, past TBS performance among the counties has been hindered by the
28 administrative burden of TBS and by county uncertainty over audit consequences; as such, past
29 TBS rates have been relatively low and these low statistics based on prior conditions provide a
30 poor and incomplete basis for projecting and setting a future TBS rate. A more effective
31 approach to setting a TBS rate might be to allow the proposed administrative changes to occur,

1 track the resulting increases in TBS utilization for a period of time (at least one year) through the
2 statewide quality assurance and performance improvement process as framed out in the TBS
3 Work Group planning options regarding the Accountability Structure, and then determine how
4 best to approach the TBS rate issue. Essentially, setting a rate at this stage of the change process
5 would result in increased resistance from the counties that provide TBS and likely impede TBS
6 development. Regardless, the Special Master has made it clear to all parties that he reserves the
7 right to establish a TBS utilization rate if a better solution cannot be stipulated by the parties.

8
9 *b. With the assistance of the parties, the Special Master shall develop clear performance*
10 *measures and “exit criteria” to establish compliance.*

11 Currently in the design phase of the TBS planning process, the TBS Work Group is
12 exploring performance measures along with other qualitative and quantitative methods for
13 monitoring and evaluating TBS delivery and outcomes statewide. The Work Group has reached
14 consensus that certain options will be included in its plan such as measuring TBS based on
15 outcomes and measuring utilization at the county level. Our initial strategy at this stage in
16 planning is to partner with DMH’s emerging statewide Performance Improvement Process (PIP)
17 that will require all county Mental Health Plans to implement the right combination of measures
18 to ensure quality processes and meaningful outcomes, and that will engage leaders across
19 multiple agencies at the state and county levels in continuous performance monitoring and
20 management of an array of mental health services including TBS. It is anticipated that this
21 statewide performance monitoring process, once it is up and running and meeting the
22 requirements of the Court Order, will allow the Department and counties to effectively oversee
23 and ensure the delivery and effectiveness of TBS services statewide without involvement of the
24 Federal Court.

25 This statewide Performance Improvement Process is a unique opportunity to embed TBS
26 performance criteria in a sustained and systematic statewide process; if the PIP can align in
27 principle and process with the qualitative and quantitative aspects of the Court Order, the Special
28 Master and TBS Work Group will not be forced to construct some other means to ensure that
29 performance measure and exit criteria requirements are met. The initial thinking behind the
30 EPSDT “High Utilizers PIP” was to ensure that the correct type and amount of services are being
31 provided to EPSDT eligible children and youth, and to ensure that state and federal dollars are

1 not being spent unnecessarily. At this time, the state has been quite receptive to looking at the
2 PIP as a means to address many of the Court's concerns.

3
4 *c. With the assistance of the parties, the Special Master shall develop a qualitative review*
5 *method or process designed to measure whether the TBS is being provided in a manner that*
6 *makes it reasonably likely that the intended benefits of mandating TBS will be substantially*
7 *realized.*

8 The TBS Work Group has reached consensus that utilization and outcome measures will
9 be included in the TBS plan to track and evaluate whether or not children and families that
10 receive TBS are benefiting from it. The Work Group has also agreed that the continuous review
11 process will include representatives from the multiple agencies involved in services to TBS class
12 children and their families, and that families and consumers will participate in the evaluation
13 process for the purpose of including the perspective of those who are best positioned to realize
14 (or not) the benefits of the program. The Work Group is being realistic about the financial
15 complexities surrounding TBS at both the state and county levels and is taking steps to ensure
16 that the TBS plan is do-able, sustainable, and meaningful with regard to the resources that will be
17 required to realize the intended benefits of TBS.

18
19 *d. With the assistance of the parties, the Special Master shall propose measures to assure that*
20 *compliance will be sustained after this case has been dismissed.*

21 The state Department of Mental Health (DMH) is responsible for administering Medicaid
22 through an agreement with the state Department of Health Care Services. As such, DMH
23 requires the counties to engage in an array of Quality Assurance (QA) and Quality Improvement
24 (QI) activities through their annual Mental Health Plan (MHP) contracts and All County Letters.
25 This year, in addition to maintaining ongoing QA and QI requirements, a Performance
26 Improvement Plan is being required of all counties. As mentioned earlier, this plan requires the
27 counties to monitor high utilization of mental health services by EPSDT eligible children and
28 youth. Although this PIP may have a limited lifespan of three to five years, it is reasonable to
29 assume that the performance improvement process being developed will be maintained by DMH
30 through the MHP contracts, and that compliance requirements contained in the PIP will remain
31 in place following Court exit from the TBS process. The Special Master holds out hope that the

1 TBS Work Group leadership, working in concert with the new statewide PIP, will construct and
2 preserve the compliance review process as a long-term institutional solution for both monitoring
3 TBS services and remedying TBS as the need arises, county by county, across the state.

4
5 *e. The Special Master shall attach great priority to achieving agreement on disputed issues.*

6 The Interest Based Decision Making (IBDM) planning method being used by the Special
7 Master for the TBS Work Group process has already produced agreement regarding a number of
8 critical components of the TBS plan, as demonstrated in the following section of this Report to
9 the Court describing the TBS Work Group/Task Group charters. Products currently in
10 development reflect consensus agreements that have recently been achieved on key issues that
11 have been disputed in the past.

12
13 *f. The Special Master may meet directly with and may communicate directly with those*
14 *representatives of defendant who are responsible for administering the TBS program within*
15 *EPSDT, as well as with defendant's counsel and plaintiffs' counsel.*

16 In the short period of time since beginning the planning process, the Special Master has
17 had productive and unrestrained access to all parties and stakeholders, and has become familiar
18 with key core interests of all parties. There has been good faith cooperation between the parties,
19 and there is opportunity and time to reach accord through the remainder of the TBS Work Group
20 planning process.

21
22 *g. The Special Master shall have access to all information and documents that he requires to*
23 *perform his job.*

24 All requests for documentation, including statistical reports from the Department, have
25 been fully met in a timely manner.

26
27 **Plan progress to date**

28 The TBS Work Group has taken the time to develop a solid foundation for planning,
29 including fully articulating the multitude of interests held by an array of stakeholders, and has
30 aligned these interests with the many options that are available to address the need for TBS
31 statewide, and to fulfill the Court Order. Smaller "Task Groups" have been formed to guide

1 formation of the various elements of the emerging TBS plan and their incorporation into a
2 coherent and potentially successful solution. Each Task Group has a charter that summarizes its
3 work plan. These charters illustrate the level and span of agreement that has already been
4 achieved among the various partners in the Work Group. Each charter has been established with
5 the full consensus of the parties including representatives of the class, the various state agencies
6 involved, and the counties. There is one hundred percent agreement in the large Work Group
7 that these charters must be fulfilled in the emerging plan; Work Group participants have assigned
8 themselves to the various tasks summarized below.

9 The following list includes the name of each Task Group, its charter or assignment, and
10 the number of representatives from each TBS planning partner who have assigned themselves to
11 the group.

12 **Group 1: Streamline the TBS Administrative Requirements**

13 Charter Statement: Identify, reduce, and/or eliminate no longer necessary elements of the
14 administrative process and court-ordered requirements. Simplify necessary requirements.

15 Representatives: DMH (2), Counties (1), Class (1), DAG (1).

16 **Group 2: Clarify Criteria for TBS Eligibility**

17 Charter Statement: To develop standard criteria for eligibility regarding “being considered for”
18 and “at risk of” to be consistently and uniformly applied across the state.

19 Representatives: DMH (2), Counties (1), Class (1), DAG (1), DHCS (1).

20 **Group 3: TBS Accountability Structure**

21 Charter Statement: Develop a TBS accountability structure that addresses statewide: 1)
22 outcomes, 2) a review process, 3) utilization.

23 Representatives: DMH (2), Counties (1), Class (1), DAG (2), Providers (1), Consultant Advisor
24 (1).

25 **Group 4: Define TBS Best Practice to Promote Service Integrity**

26 Charter Statement: Appropriately define and operationalize Therapeutic Behavioral Services in
27 order to establish and/or maintain the fidelity of the service.

28 Representatives: DMH (3), Counties (1), Class/Parents (1), DHCS (1), Providers (1).

29 **Group 5: Create TBS Coordination of Care Process**

30 Charter Statement: Create a process to facilitate/ensure TBS coordination of care in the county
31 mental health plans and among involved agencies, providers, families, and their supports.

1 Representatives: DMH (2), Counties (1), Class (1), Providers (1), Consultant Advisor (1), former
2 DMH Advisor (1).

3 **Groups 6 and 7: TBS Training and TBS Manuals**

4 Charter Statement: Develop a TBS Training and Technical Assistance Plan; Develop TBS
5 Training and Technical Assistance Manuals.

6 Representatives: DMH (2), Counties (1), DAG (1), Class/Parents (2), Providers (1).

7 **Group 8: TBS Outreach**

8 Charter Statement: To develop a TBS outreach plan to reach all class members and those child-
9 serving agencies that have responsibility for them.

10 Representatives: DMH (2), Counties (1), Class (1), DHCS (1).

11 The Task Groups have already begun meeting by telephone conference call and/or in
12 person during June and will report their progress back to the entire TBS Work Group during in-
13 person meetings on July 10, August 14, and September 18. Their goal is to assemble a proposed
14 TBS Plan (including issues subject to joint stipulation) to the Court by October 1, 2008.

15

16 **Preliminary Conclusions and Findings:**

17 Over the past three months, the Special Master has held numerous conversations,
18 meetings and discussions with an array of stakeholders involved in TBS, and with the key parties
19 to the Emily Q matter. Through these conversations, several preliminary conclusions and
20 findings are becoming apparent. These are summarized below.

21 Overall, the members of the TBS Work Group have been able to move beyond their
22 previous positions and achieve very important consensus agreements regarding the emerging
23 TBS plan. There is good faith cooperation between the parties and this willingness to work
24 together has generated a strong sense of optimism with the likelihood that the parties will be able
25 to stipulate to a comprehensive TBS solution. Within the Work Group, there is enormous
26 capacity and knowledge and commitment to fulfilling the Court Order in spite of past
27 difficulties.

28 On the other hand, there remain significant structural challenges to TBS within the
29 mental health system. Some of the difficulties with implementing TBS a decade ago were
30 caused by pre-existing systemic and funding problems across the state – these systemic
31 conditions have not been ameliorated in the ten years since that time, and in fact have become

1 more troubling and complex due to the current adverse economic conditions. Stated simply, the
2 economic climate has worsened between 1998 and 2008 and these worsened conditions make
3 TBS implementation even more difficult now than it was then. Specifically, the state has shifted
4 from a period of economic growth in the late 1990s to a more recent period of state and local
5 economic retraction with reduced state and local revenues in 2008 to meet existing budget
6 obligations. As a consequence, state and county general funds are significantly reduced and both
7 the state DMH and the counties are under intense pressure to balance their budgets, often
8 resorting to the reduction of mental health and other health and human services as a means to
9 reduce costs. In addition to the general decline of funding, the Governor (in 2002-03) required
10 that counties assume ten percent of the state share of cost for EPSDT services that fund TBS and
11 many other core mental health services. Prior to the ten percent match requirement, EPSDT
12 services were fully funded with approximately fifty percent coming from the state and fifty
13 percent from the federal government. As economic conditions worsen, this ten percent match is
14 becoming a barrier to increasing EPSDT services in many counties and will certainly impact the
15 effort to increase TBS utilization statewide. There is growing concern among the counties that
16 the Governor could propose an EPSDT county match above the existing ten percent in order to
17 balance California's state general fund expenditures against needs and resources.

18 With the passage of Proposition 63 and the Mental Health Services Act (MHSA) there
19 was hope that some of the systemic and funding problems in mental health services could be
20 addressed, and there was an expectation that the MHSA one percent tax on millionaires would
21 help transform the mental health system for severely mentally ill and severely emotionally
22 disturbed. MHSA has added funding to the mental health system, however the broad reductions
23 in federal and state funding are undermining MHSA innovation efforts, and this new resource is
24 being used to shore up lost programs. As noted in a CMHDA handout, "While the MHSA will
25 bring an exciting and much-needed infusion of new funds into California's public mental health
26 system, it will not fix the structural financing problems counties face. It is inevitable that
27 counties will need to reduce services in their non-MHSA systems, at the same time they are
28 building new services under MHSA." That is, the increase in MHSA funding has been offset by
29 overall loss of existing revenues, increasing the difficulty in "encouraging" counties to commit
30 funding to TBS in the current economic environment.

31

1 The Work Group has committed itself to developing the best possible plan without
2 getting bogged down or blocked by the many funding challenges ahead; this will require being
3 realistic about the financial complexities involved and focusing on a plan that is do-able given
4 the economic environment and sustainable even in the face of an uncertain economic future. It is
5 possible that extraordinary effort may be required to develop strong buy-in among the counties
6 that have been especially hard hit by the recession and where mental health services are not the
7 highest priority of the county Board of Supervisors.

8 The TBS Work Group members appear to have overcome and stepped beyond a decade
9 of litigation and conflict and have established very positive solution-focused relationships that
10 promise to carry the group through the planning challenges that lie ahead. The prospect of
11 reaching a comprehensive stipulated agreement is very good. At the same time, the Special
12 Master has acquired a comprehensive understanding of the various interests and options of the
13 various parties and, in the event the parties cannot reach consensus, the Special Master is
14 prepared to develop a “best possible” TBS plan to meet the Court Order by October 1, 2008.

15
16 **Recommendations**

17 The IBDM process is working, and my main recommendation is to continue the process.
18 The plan is shaping up to meet the highest expectations of the Court Order and there is strong
19 will and commitment among the Work Group members to complete the process and come to
20 agreement on a proposed TBS plan by October 1.

21 Because of the compressed planning time frame under the Court’s Order to submit a plan
22 by October 1, the Special Master has brought in two consultants to assist with the planning
23 process. Funding for their assistance is being depleted and additional funding will be necessary
24 to complete the process. In addition, the Special Master – with agreement of the parties – invited
25 two key stakeholders to join the group; one is a family advocate and parent of a child who
26 received public mental health services, and the other is a mental health practitioner who currently
27 delivers TBS services in two counties; both have added invaluable assistance and knowledge to
28 the Work Group. While these two members’ Work Group time was covered by their agencies,
29 their travel expenses were not. It was initially planned that their travel costs would be claimed
30 through the Plaintiff’s billings; however due to the length of time needed to settle costs, it does
31 not seem reasonable to expect the Plaintiffs to be responsible for the parent and practitioner

1 travel costs. After discussion among the lead attorneys, all parties agree that it be recommended
2 to the Court that funding be added to the Special Master's contract to reimburse the parent and
3 practitioner members' travel expenses to date and to cover their remaining travel expenses for
4 the duration of the project. Again, their employers have donated these members time – only their
5 travel expenses are included in this request for additional funding.

6 All parties agree that the following budget changes be made to the Special Master Budget
7 for the period February 21, 2008 to February 20, 2009:

- 8 • Increase the Professional Services budget from \$27,455.00 to \$47,000.00. This
9 increase of \$19,545.00 at \$85.00 per hour is for additional technical support in the
10 areas of outcome measures, accountability, quality assurance indicators and
11 additional Task Group and Work Group meeting facilitation. I would expect
12 primarily to use my existing two consultants David Gray and Steve Korosec. David
13 Gray would be the primary consultant assigned to technical consultation for
14 quantitative and qualitative data and measures. Steve Korosec would facilitate a
15 limited number of Work Group and Task Group meetings.
- 16 • Add \$4,049.00 to reimburse the Plaintiffs for prior expenses incurred for parent and
17 practitioner Work Group member travel expenses specifically related to their
18 participation in approved Emily Q Work Group and Task Group meetings up through
19 the June 25, 2008 meeting. These related travel expenses were to attend Work Group
20 meetings in Sacramento.
- 21 • Add \$4,000 to reimburse the parent and practitioner Work Group members for future
22 travel expenses specifically related to their participation in approved Emily Q Work
23 Group and Task Group meetings. It is estimated that they will make one trip a month
24 to Sacramento for meetings.

25
26 **Proposed dates for the next Court appearance**

27 For the pleasure of the Court, the Special Master and all parties are available on the
28 following dates to appear before the Court:

- 29 • Preferred: July 21, 22, 23, 25.
- 30 • Less preferred: July 17, 18; August 5, 6, 12.

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In conclusion, it has been a privilege and a challenge to serve as your Special Master. I look forward to a very productive next three months.

Dated: June 27, 2008

Respectfully Submitted

Richard Saletta, LCSW
Special Master

APPENDIX I – EMILY Q WORK GROUP PARTICIPANTS

California State Department of Department of Mental Health

- Mike Borunda, Assistant Deputy Director, Community Services Division
- Rita McCabe, Chief, Medi-Cal Mental Health Branch, Medi-Cal and Health Care Benefits
- Cynthia Rodriguez, Chief Counsel
- Barbara Zweig, Senior Staff Counsel

California State Department of Health Care Services

- Dina Gonzales, Chief, Medi-Cal Benefits Waiver Analysis and Rates
- John Krause, Chief Counsel, Legal Services

Representing the Class

- Melinda Bird, Senior Counsel, ACLU Foundation of Southern California
- Jim Preis, Executive Director, Mental Health Advocacy Services, Inc.
- JoeAnne Hust, Peer-to-Peer Support-Parent Services, Hathaway-Sycamores Child and Family Services
- Tom Sodergren, Practitioner, Assistant Director of Community Based Services, Casa Pacifica

California State Department of Justice, Office of the Attorney General

- Ismael Castro, Deputy Attorney General
- Melinda Vaughan, Deputy Attorney General

California Mental Health Director's Association

- Don Kingdon, Deputy Director
- Nancy Pena, President and Santa Clara County Mental Health Director

California State Department of Alcohol and Drug Programs

- Dave Neilsen, Deputy Director – Formerly Children's Mental Health Chief, State Department of Mental Health