



Disability Rights

WASHINGTON

Washington's protection and advocacy system

December 17, 2021

Via email to tim.lang@atg.wa.gov

Dear Assistant Attorney General Lang,

This letter is to memorialize and conclude Disability Rights Washington's monitoring in *DRW v. Sinclair*, a lawsuit and settlement relating to the overly restrictive housing conditions for people with mental illness in the Residential Treatment Units (RTU) at the Washington State Penitentiary's Baker, Adams, and Rainier (BAR) units. The settlement in *DRW v. Sinclair* required that the Department of Corrections create a medium custody unit in the BAR unit RTU, with conditions and programming substantially similar to those in the medium units at the Special Offender Unit (SOU) at Monroe Correctional Complex.

As part of our settlement monitoring, DRW conducted a quarterly data review, reviewing the custody assignments, treatment plans, and overrides for people in the BAR unit RTU, as well as some similar records from the SOU. We also visited the RTU in the BAR units in May 2021 and December 2021.¹ During those visits we spoke to people on the medium custody unit and those still on the close custody unit, including people on the waitlist for medium and people who had been overridden to close due to mental health needs. In May 2021 we also visited the medium custody units at the SOU, and spoke with people who had been in both locations. We also spoke with programming and custody staff in the SOU and the BAR units.

Since the settlement was approved in July 2019, the Department has changed the physical environment of Adams unit in the BAR units, creating a medium custody unit that provides independent cell access, increased access to yard, dayroom, and property, and increased programming. When the medium unit was initially created DRW had concerns about the unit's extensive waitlist, with more than a dozen people routinely waiting in close custody for a medium bed to open up; however, the waitlist has generally decreased quarter after quarter. Data produced in the October 2021 reporting period indicated only one person was on the waitlist. At the time of DRW's visit in December 2021 there were four people on the waitlist but three were approved for transfer and/or awaiting transport. Given this improvement, and reported procedural changes to the way residents are referred to the RTUs, we anticipate that this trend will continue despite termination of the settlement.

The settlement also required that in the event an individual is placed at a higher custody level in the BAR units due to their mental health needs, that custodial override should be documented and a plan for progressing to a lower custody level should be part of that person's treatment plan. DRW has reviewed the custody documentation and treatment plans produced as part of settlement monitoring and has confirmed that treatment plans are being created and updated for people overridden to close custody in the BAR unit RTU. Again, at the beginning of the settlement period DRW had concerns about the number of people who appeared to be subject to a custody override and the repeated overriding for certain individuals but as the settlement has progressed that number has decreased. DRW still urges the

¹ The COVID pandemic precluded in-person monitoring from March 2020-March 2021. As a result, DRW held a weekly open call block specifically for residents in the BAR units so that people could contact us collect with any question or concern related to conditions in the unit or settlement implementation.

Department to review the treatment plans for people subject to an override three or more times to ensure that people continue to progress to these lower custody units as appropriate.

In anticipation of the termination of the settlement in *DRW v. Sinclair*, during our December 2021 trip, DRW spoke with people on the unit about additional improvements or changes they would like to see as the facility moves forward. In general, people reported that the medium unit is a substantial improvement from close and that they enjoyed the increased out of cell and yard time, as well as the additional programming. Counselors Long and Acosta, as well as the program staff in the Annex were all specifically identified as being particularly supportive staff.

However, during interviews people noted that some programming in the Annex is scheduled during the afternoon shift change and that when there is a staff shortage in an oncoming shift, programming is routinely shut down and they are forced to return to the unit. This issue was raised with CUS Buttice at the time of the trip, with a suggestion that the Annex programming be shifted to a time that does not span a shift change in order to avoid this issue. Annex programming was very popular with people we interviewed and we urge DOC to make this seemingly simple shift in schedule.

People in Adams unit also requested access to the big yard in the afternoon. It is our understanding that the BAR unit currently has access to the big yard only in the mornings, with other medium units getting the afternoon shift exclusively. We suggest that this schedule be rotated so that people in the BAR unit can access the big yard during later hours, when it poses less conflict with other events (medical call outs and jobs) and when it is reportedly warmer and more convenient for contacting family by phone. People also requested additional activities for the small yard, such as basketballs, or other equipment. Finally, people in the medium unit expressed an interest in taking their media players to the yard. People in other medium units reportedly have this ability and it is not clear why this same privilege cannot be extended to Adams unit. This issue has been raised before to DOC and while vague safety concerns were raised in response, it remains unclear why this cannot be accomplished in order to give people in the BAR unit the same access to media players in the yard as non-BAR residents. Again, all of these issues were raised with staff at the time of our most recent visit and we urge leadership at the facility to take steps to address these issues.

Finally, residents on the unit expressed an interest in increased mental health programming and as staffing stabilizes after COVID, we encourage the facility to evaluate how additional programming can be added. People also requested access to higher education in the BAR units; residents at the SOU have expressed similar interests. We understand that DOC's contract with the community college system requires a certain number of participants, making it potentially more difficult to provide programming in smaller units. However, as you know, some people spend many years in the RTU, with some staying in that setting for their entire incarceration. It is our understanding that there is currently no location in the DOC system where individuals in need of inpatient level mental health care can access any education beyond Adult Basic Education. While access to higher education in the RTUs was not encompassed in the *DRW v. Sinclair* settlement, it is an issue that we heard repeatedly during our monitoring and the ADA-related concerns that drove DRW to initiate *DRW v. Sinclair* are presented by this issue as well. We therefore strongly urge DOC to evaluate how increased educational services can be made available to people in the RTU.

Based on our data review, meetings with the Department, and visits to the BAR units and the SOU, DRW believes that DOC is in substantial compliance with the settlement in *DRW v. Sinclair* and does not intend to challenge the termination anticipated in Section 2(f)(2) of the final settlement in this case.

Thank you for collaborating with DRW on this important and substantial change at the BAR units; we look forward to continued work with the Department.

Sincerely,



Rachael Seevers
AVID Program Attorney
Disability Rights Washington

Cc: AAG Cassie VanRoojen
Superintendent Donald Holbrook
Heather McKimmie, DRW