



U.S. Department of Justice

Office of Justice Programs

Office for Civil Rights

Washington, D.C. 20531

January 24, 2023

VIA CERTIFIED MAIL

Sean Murphy, Deputy Secretary
Washington State Department of Corrections
P.O. Box 41100
Olympia, Washington 98504-1110

Re: *Notice of Findings*
[REDACTED] v. Wash. State Dep't of Corr. (21-OCR-1170)

Dear Deputy Secretary Murphy:

Thank you for the documentation that the Washington State Department of Corrections (DOC) submitted to the Office for Civil Rights (OCR), Office of Justice Programs, U.S. Department of Justice (DOJ) in connection with the administrative Complaint that [REDACTED] (Complainant), filed against the DOC. In his Complaint, the Complainant primarily alleges that the DOC is discriminating against him based on disability by continuously housing him in segregation.

The OCR has completed our review of the documentation provided by both the DOC and the Complainant and has determined that there is insufficient evidence of a violation of Title II of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794, and the DOJ implementing regulations at 28 C.F.R. pt. 35; pt. 42, subpt. G. Our findings are set forth below for your review.

I. Factual Background

A. The Complainant's Allegations

The Complainant alleged the following:

The Complainant is an incarcerated individual within the custody of the DOC. The Complainant began his incarceration on [REDACTED]. The Complainant initially resided at the [REDACTED], and then the DOC transferred him, first, to the Stafford [REDACTED] in approximately [REDACTED] and then to the [REDACTED] in approximately [REDACTED]. The Complainant currently resides at the [REDACTED].

The Complainant states that he has several mental health disabilities, including social isolation disorder, panic disorder, major anxiety, major depression, and post-traumatic stress disorder. Due to these disabilities, the Complainant has difficulty handling stress, understanding things, and focusing enough to complete a task.

At all three correctional facilities, the DOC has housed the Complainant in segregation, or solitary confinement, within the facility's Intensive Management Unit (IMU). According to the [REDACTED] webpage, the IMU is a highly controlled environment where the DOC houses "behaviorally difficult-to-manage" individuals. While in segregation, the Complainant is confined to his cell approximately twenty-three hours per day, and the DOC only briefly lets him out to make a phone call, shower, or occasionally exercise, and he does not consistently have these opportunities. The Complainant has submitted numerous requests to participate in educational programming, but the DOC consistently denies his requests. Until approximately [REDACTED] the DOC denied the Complainant the opportunity to order shampoo or other hygiene items from the commissary, putting him at risk of contracting COVID-19.

The Complainant asserts that his non-stop placement in segregation since his arrival at the DOC has exacerbated his mental health conditions and that his mental health is deteriorating. The Complainant has been experiencing chest pains and has had to go to the hospital on several occasions. The DOC is providing the Complainant with medication for his mental health disabilities, but the Complainant's mother, who initially filed the Complaint with the OCR on behalf of the Complainant, told the OCR that she does not believe that it is the correct medication, as she says the Complainant does not make any sense when she speaks with him on the telephone. The Complainant's mother has contacted the Complainant's counselor along with several DOC officials to express her concerns about the Complainant's non-stop placement in segregation, but they have not taken any action to remove him from segregation. The Complainant's counselor told the Complainant's mother that the DOC is trying different medications for the Complainant. The Complainant believes that the DOC's continuous placement of him in segregation and its failure to provide him with proper medication for his mental health disabilities constitutes discrimination based on disability in violation of the ADA and Section 504.

B. The DOC's Response

On July 7, 2022, the OCR notified the DOC of the Complainant's allegations and requested that it provide a position statement responding to the allegations along with some specific information and documentation. The DOC provided a position statement on August 5, 2022, and responded to the OCR's follow up inquiries on October 17 and December 21, 2022.

In its response, the DOC stated that over the past several years, it has implemented improvements that significantly reduce the use restrictive housing and improve conditions within restrictive housing, such as increasing the amount of out-of-cell time for individuals housed in segregation. The DOC provided the OCR its relevant policies regarding the placement of individuals in restrictive housing, including DOC Policy No. 320.255, *Restrictive Housing* (rev. Mar. 6, 2020); DOC Policy No. 320.250, *Maximum Custody Placement/Transfer/Release* (rev.

Aug. 11, 2020); MCC Operational Memorandum No. 320.250, *Maximum Custody Placement/Transfer/Release* (rev. Mar. 6, 2020); and DOC Policy No. 320.200, *Administrative Segregation* (rev. Mar. 6, 2020). Of note, DOC Policy No. 320.255, *Restrictive Housing*, states that “restrictive housing” is housing for incarcerated individuals whose continued presence in general population would pose a serious threat to employees, themselves, or others or to the security of a correctional facility. Policy No. 320.255 states that restrictive housing includes administrative segregation, pre-hearing confinement, disciplinary segregation, maximum custody, and close observation. The policy states that individuals may earn levels while in restrictive housing through their behavior pursuant to the DOC’s Restrictive Housing Level System Grid, which identifies privileges and authorized items for each level.

DOC No. Policy 320.255 lists specific conditions of confinement that the DOC will provide to individuals assigned to restrictive housing, unless or safety or security considerations dictate otherwise. These conditions include access to personal hygiene items pursuant to DOC Policy No. 440.080,¹ the opportunity to shower three times per week, the opportunity to receive one hour of exercise outside of their cell five days per week, limited program access due to risk level, and access to health care services, including medical and mental health services.

According to DOC Policy No. 320.250, *Maximum Custody Placement/Transfer/Release*, individuals assigned to Maximum custody are those who pose a significant risk to the safety and security of employees or other individuals, have validated protection needs, or are designated individuals with serious mental illness. The policy states that the DOC will consider less restrictive alternatives before assigning an individual to Maximum custody. According to the policy, individuals assigned to Maximum custody and housed within an IMU or Intensive Treatment Unit (ITU) are a significant risk to the security and safety of employees or others by means of, but not limited to, commission of violent serious infraction(s); chronic behavioral problems; acts that present a significant risk, including escape; and/or validated protection needs. The policy notes that ITUs have been established at the MCC in the Special Offenders Unit (SOU) and at the Washington Corrections Center for Women for seriously mentally ill individuals.

Pursuant to Policy 320.250, the DOC will provide individuals assigned to Maximum custody with out-of-cell opportunities that are consistent with reasonable safety and security practices. The policy indicates that the DOC will develop relevant behavioral and treatment plans for individuals assigned to Maximum custody, and failure to actively participate in designated programming may impact an individual’s level promotion or promotion to a lower custody classification. The policy states that the DOC’s Facility Risk Management Team will conduct formal reviews of an individual’s assignment to Maximum custody at least every 180 days and

¹ The OCR reviewed DOC Policy No. 440.080, *Hygiene and Grooming for Offenders* (rev. Dec. 20, 2021), located on the DOC’s website at www.doc.wa.gov. Policy No. 440.080 states that incarcerated individuals will have access to supplies necessary to maintain personal hygiene. Policy No. 440.880 further states that when an individual arrives at the DOC the DOC shall issue the individual a variety of listed hygiene products, and that after this initial issuance individuals can purchase hygiene items through the commissary.

informal reviews at least every 60 days, focusing on the specific behavioral expectations for the individual.²

In its response, the DOC clarified that the Complainant entered DOC custody on [REDACTED], and not [REDACTED], as indicated in the Complaint. The DOC said that it considers the Complainant to have “Amphetamine-type substance (or other stimulant)-induced psychotic disorder, moderate.”

The DOC said that it received the Complainant from the [REDACTED] following a conviction for attempted robbery and assault with a deadly weapon. The DOC provided the OCR with documentation demonstrating that while at the [REDACTED], the Complainant assaulted another detained individual, and that while DOC officers were escorting the Complainant to court the Complainant tried to escape and struck an officer in the face. The DOC said that based on the Complainant’s actions at the [REDACTED] the DOC designated the Complainant Maximum custody and assigned him to the IMU at the [REDACTED]. The DOC stated that on [REDACTED], it transferred the Complainant from the IMU to a close custody unit, and that on [REDACTED], the Complainant assaulted another incarcerated individual when exiting his cell and the DOC transferred him back to the IMU.

The DOC provided information demonstrating that from [REDACTED], the Complainant received four additional “serious and violent” disciplinary infractions. Specifically, on [REDACTED], the Complainant received an infraction for spitting in the face of staff escorting him from the shower and throwing feces at a sergeant; on [REDACTED], the Complainant received an infraction for assaulting staff who were escorting him to the recreation yard; on [REDACTED], the Complainant received an infraction for resisting staff while being escorted to the shower; and on [REDACTED], the Complainant received an infraction for assaulting staff following an escort. The DOC further indicated that on [REDACTED], the Complainant received an infraction for throwing his food tray at staff.

The DOC said that the Complainant remained in the [REDACTED] IMU until [REDACTED], when the DOC transferred the Complainant to the [REDACTED] IMU. The DOC indicated that it then transferred the Complainant to the [REDACTED] IMU on [REDACTED]. According to the DOC, the DOC placed the Complainant in the [REDACTED] IMU due to the staff assaults that he committed while at the [REDACTED]. The DOC said that pursuant to DOC Policy 320.250, the DOC conducted a formal classification review of the Complainant’s Maximum custody assignment on [REDACTED], and decided to transfer the Complainant to the MCC’s SOU. According to the DOC, the [REDACTED] SOU is a facility for the treatment of seriously mentally-ill individuals needing a residential level of care and which offers specific treatment functions and unique programs. The

² The DOC explained in its response that a formal classification review is conducted by a DOC multidisciplinary team which includes representatives from Classification, Custody/Security, Health Services, Mental Health, and Program Staff, where the team reviews an individual designated as Maximum custody’s treatment, programming, and behavioral status. The team documents its findings in a Custody Facility Plan and submits it to the DOC’s Headquarters MAX Custody Committee, which makes a final decision on custody level, appropriate facility placement, and program assignments. The DOC further said that an informal classification review does not result in a Custody Facility Plan and involves a review of the individual’s progress and compliance with treatment and programming, behavior, and meeting with their assigned counselor.

DOC indicated that the decision to place the Complainant in the SOU was due to the Complainant's reports of auditory hallucinations; staff observation of behavior that appeared to be in response to paranoid ideation, somatic delusions, and loose associations; and the Complainant's disheveled and unclean appearance. The DOC said that it transferred the Complainant to the [REDACTED] SOU on [REDACTED], and that he remains in the SOU. The DOC indicated that while the Complainant resided at the IMUs in the [REDACTED], the [REDACTED], and the [REDACTED], he was considered to be "general" Maximum custody. The DOC stated that during the time that the Complainant resided in the IMUs, the DOC offered him the opportunity for one hour of recreation in the yard five days per week, preceded by a shower on three of those days. The DOC said that it has consistently offered the Complainant these opportunities for recreation and showers, but that he refused recreation and/or showers on multiple occasions. The DOC provided the OCR with copies of several Daily Segregation Reports documenting the Complainant's activities in the IMUs and covering the periods of [REDACTED], [REDACTED], and [REDACTED], showing that the Complainant refused yard and/or a shower on five occasions, and that he received yard and/or a shower on nine occasions.

The DOC stated that once the Complainant began residing in the [REDACTED] SOU on [REDACTED], he remained Maximum custody but was considered to be in "Intensive Treatment Status" (ITS). According to the DOC, ITS allows individuals more hours of out-of-cell time that would equate to the hours offered to individuals held in non-solitary confinement. The DOC further indicated that as individuals proceed through their treatment plan and obtain higher ITS levels, out-of-cell time increases. The DOC said that in addition to the aforementioned opportunities for recreation and shower, the Complainant is currently afforded the opportunity to participate in five weekly out-of-cell activities in the dayroom (Monday morning and evening, Wednesday afternoon, Friday evening, and Saturday afternoon), a weekly session in the Nature Room, and bi-weekly sessions with a mental health provider, along with church and library activities. The DOC indicated that the Complainant also participated in and successfully completed a weekly Anger Management group while at the SOU. According to the DOC, some programs that may be available to the Complainant in the future include Cognitive Behavioral Change, Substance Abuse Treatment, Adult Basic Education, General Education Development, Medication Management, Graphic Arts & Printing, and Information Technology.

The DOC provided the OCR with a spreadsheet summarizing the Complainant's yard and out-of-cell activities in the SOU during the period of [REDACTED]. This document indicates that the Complainant refused yard twenty-three times and refused an "OCA" (out-of-cell activity) one time, and attended yard, dayroom, church, a mental health session, a visit, class, or library on forty-two occasions.

The DOC indicated that the Complainant most recently received a formal review of his Maximum custody classification on [REDACTED]. The DOC provided the OCR with the Custody Facility Plan stemming from that review, where the multidisciplinary review team recommended, and the DOC approved, maintaining the Complainant on maximum custody status/ITS and retaining him at the [REDACTED] SOU for continued residential level of care. The Custody Facility Plan notes that the Complainant is assigned maximum custody due to safety and security concerns. The Plan states that the Complainant is compliant with his treatment plan and medication, but still has breakthrough symptoms but is making an effort to implement strategies

to manage his symptoms. The Plan indicates that the Complainant participates in out-of-cell activities “but is suspicious that he is being denied opportunities to attend scheduled activities and other out of cell activities. However, documentation indicates that they have been offered and [the Complainant] has refused.” The Plan states that the Complainant is currently ITS Step 3 and is pending Step 4 review later that month, and that he has had no serious infractions since the [REDACTED], assault on staff. The Plan recommends that the Complainant obtain and maintain ITS Step 5 and participate in congregate programming as identified in his Mental Health Treatment Plan.

In regard to the Complainant’s mother’s concerns that the DOC is not providing the Complainant with the correct medication, the DOC said that it is currently providing the Complainant with the drug [REDACTED]. The DOC said that the Complainant continues to experience some mental health symptoms such as hallucinations and delusions, but that his medication appears to significantly reduce the severity and frequency of these symptoms. According to the DOC, the Complainant is generally receptive to applying reality testing or logic to some of his paranoid beliefs, and that since the DOC has prescribed psychotropic medications on [REDACTED], the Complainant has not acted upon his paranoid beliefs. The DOC said that psychiatric providers try to meet with patients at least every ninety days, and more frequently upon request, but that patients have the right to refuse these meetings. The DOC indicated that the Complainant met with a psychiatric provider in [REDACTED] and [REDACTED], but that he refused to meet with the provider in [REDACTED]. The DOC further indicated that since residing at the SOU, the Complainant has increased his participation in bi-weekly mental health sessions.

Lastly, as for the Complainant’s assertion that he was unable to order shampoo or other hygiene items from the commissary until approximately [REDACTED], the DOC denied this allegation. The DOC said that while the type and number of items that individuals can order is limited for those classified as maximum custody, such individuals can order up to \$10.00 worth of approved hygiene and correspondence related items per week no matter what level they are at. The DOC provided the OCR with a step grid that indicates this. The DOC stated that the Complainant has had the opportunity to order hygiene items at any time during his incarceration and provided commissary receipts for the Complainant demonstrating that the Complainant ordered deodorant on several occasions beginning in [REDACTED] and shampoo beginning in [REDACTED].

II. Legal Analysis

Title II of the ADA provides that “no qualified individual shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. Additionally, Section 504 prohibits agencies that receive federal financial assistance from discriminating against otherwise qualified individuals on the basis of a disability in their programs and activities. 29 U.S.C. § 794. An individual is considered to have a disability under the ADA and Section 504 if the individual has a physical or mental impairment that substantially

³ According to the OCR’s research, [REDACTED] is an anti-psychotic drug that is used to treat mental illnesses such as schizophrenia and bipolar disorder and their associated symptoms.

limits one or more major life activities; has a record of such an impairment; or is regarded as having an impairment. 42 U.S.C. § 12102; 29 U.S.C. § 705(9)(B). Since the DOC is a public entity and is receiving financial assistance from the DOJ, it is subject to the provisions of both the ADA and Section 504.

In accordance with the DOJ's regulations implementing the ADA, to comply with the ADA, correctional agencies shall ensure that they are housing incarcerated individuals with disabilities in the most integrated setting appropriate to the needs of the individual. 28 C.F.R. §§ 35.130(d), 152(b)(2). The Supreme Court has stated, "Unjustified isolation, we hold, is properly regarded as discrimination based on disability." *Olmstead v. L.C. ex. rel. Zimring*, 527 U.S. 581, 597 (1999). Correctional facilities shall not place incarcerated individuals with disabilities in facilities that do not offer the same programs as the facilities where they would otherwise be housed. *Id.* at § 35.152(b)(2)(iii). Rather, correctional facilities shall make housing assignments of incarcerated individuals with disabilities under the same criteria applied to incarcerated individuals who do not have disabilities. *See* 28 C.F.R. pt. 35, App. A.

The OCR has carefully considered all of the information submitted by both the Complainant and the DOC and finds that the evidence is insufficient to demonstrate that the DOC is violating the ADA or Section 504 in regard to its housing of the Complainant. As an initial matter, based on the information provided by both the Complainant and the DOC, it appears that the Complainant has one more mental illnesses that qualify as a disability under the ADA and Section 504.

The DOC stated that upon the Complainant's arrival at the DOC on [REDACTED], it initially assigned the Complainant to Maximum custody and placement in the IMU based on his actions at the [REDACTED], where he assaulted another inmate, assaulted an officer, and tried to escape. This custody determination appears to be consistent with DOC Policy 320.250, which states that individuals assigned to Maximum custody are those who pose a significant risk to the safety and security of employees or other individuals, have validated protection needs, or are designated individuals with serious mental illness. Policy 320.250 further states that individuals will be placed in an IMU or ITU if they are a significant risk to the security and safety of employees, such as by commission of violent serious infraction(s); chronic behavioral problems; and acts that present a significant risk, including escape. It appears that the DOC had legitimate reasons to assign the Complainant Maximum custody status and to place him in the IMU based on the assaults and the escape attempt he committed at the jail immediately preceding his incarceration at the DOC.

The DOC provided information demonstrating that during the time the Complainant has been incarcerated at the DOC, he has received [REDACTED] serious infractions: [REDACTED]. The DOC said that it continued to place the Complainant in an IMU due to his assaults on staff, and the Complainant's most recent formal custody review indicates that he is designated Maximum custody due to safety and security concerns. The DOC's assignment of the Complainant to Maximum custody status and his placement in an IMU or ITU appears to be consistent with the criteria set forth in DOC Policies 320.255 and 320.250, and there is insufficient evidence that the DOC is making its housing assignments of the Complainant under different criteria than that applied to individuals without disabilities. The evidence is insufficient to demonstrate that the

DOC is denying the Complainant any benefits of its services, programs, or activities because of his disability, and not due to his behavior and demonstrated safety risk to staff and other incarcerated individuals. The evidence is also insufficient to demonstrate that the DOC is not housing the Complainant in the most integrated setting appropriate to his specific needs, or that due to his disability it has placed the Complainant in a facility where he would not otherwise be housed. While the evidence demonstrates that on [REDACTED], the DOC decided to transfer the Complainant from the [REDACTED] IMU to the SOU/ITU based on his demonstrated mental health needs, the Complainant is actually receiving more out-of-cell time and programs and treatment at the SOU than when he resided in the IMU.

In regard to the Complainant's assertions that the DOC has not consistently offered him opportunities to leave his cell and that he is confined to his cell approximately twenty-three hours per day, the information and documentation submitted by the DOC demonstrates that while in the IMU and SOU, the Complainant has refused offered opportunities to go to the yard and/or to shower on a number of occasions. The Complainant's out-of-cell time increased following his transfer to the SOU and continues to increase as he obtains higher ITS levels. The evidence demonstrates that currently, the Complainant is scheduled to have one hour of recreation five times per week, a shower three times per week, out-of-cell activities in the dayroom five times per week, a session in the Nature Room once per week, and sessions with a mental health provider every other week. The evidence demonstrates that the Complainant also attended and successfully completed a weekly Anger Management group, and that additional programming may be available to him in the future depending on his ITS level and his Mental Health Treatment Plan. In the DOC's recent custody classification review of the Complainant, the review team noted that the Complainant is suspicious that he is being denied out-of-cell opportunities, but that documentation indicates that the DOC has offered such opportunities and the Complainant has refused. The evidence before the OCR is insufficient to demonstrate that the DOC has not been offering the Complainant the out-of-cell opportunities that he is allowed or that the DOC is limiting his opportunities based on his disability and not pursuant to his custody classification and ITS level.

Regarding the Complainant's mother's concerns that the DOC is not providing the Complainant with the correct medication for his mental health disabilities, it appears that the DOC is currently providing the Complainant with the anti-psychotic drug [REDACTED] and that this medication has reduced his symptoms and that he is able to take steps to manage his symptoms. As for the Complainant's assertion that he was unable to order shampoo or other hygiene items from the commissary until approximately [REDACTED], the evidence appears to indicate that the Complainant had the opportunity to order approved hygiene items prior to [REDACTED], subject to the DOC's \$10.00 limit per week. The Complainant has not provided the OCR with any documentation demonstrating that he attempted to order hygiene items prior to [REDACTED] but the DOC denied his request. The evidence before the OCR is insufficient to demonstrate that the DOC is providing the Complainant with inadequate medication for his disabilities or that the DOC restricted the Complainant from ordering hygiene items.

Based on the foregoing, the OCR finds that there is insufficient evidence that the DOC is discriminating against the Complainant based on disability in violation of the ADA and Section 504. Accordingly, the OCR is closing our review of this Complaint.

Sean Murphy, Deputy Secretary

January 24, 2023

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Please be advised that the closure of this Complaint is limited to the specific facts of the matter and does not preclude the DOJ from taking additional appropriate action to evaluate a recipient's compliance with any of the laws enforced by the DOJ. Additionally, closing this Complaint does not affect the DOC's requirement to comply with all applicable federal laws and regulations, provided that the DOC remains subject to such laws and regulations.

Federal law also protects persons who participated in the OCR's investigation from retaliation for having provided information to the OCR. The OCR will notify the Complainant about the prohibition against retaliation and the result of this investigation. The OCR will initiate an investigation if it should receive credible evidence of reprisal. The OCR will also share this letter with the Complainant and notify him of his right to file future complaints with the OCR if he believes he experiences discrimination or retaliation in the future.

Thank you for your cooperation in this review. If you have any questions, please contact OCR attorney [REDACTED].

Sincerely,

X 

Michael L. Alston

Director

Signed by: MICHAEL ALSTON