



PENNSYLVANIA INSTITUTIONAL LAW PROJECT

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March 15, 2024

Superintendent Scott Klinefelter
P.O. Box 1000
209 Institution Drive
Houtzdale, PA 16698

Superintendent Patricia Thompson
SCI Albion
10745 Route 18
Albion, PA 16475

Re: Mr. Ethan Shaw #QN3992

Dear Superintendents, Klinefelter and Thompson:

We are writing on behalf of our client Mr. Ethan Shaw, #QN3992, who is currently incarcerated in the Veteran Service Unit (“VSU”) at SCI Houtzdale. Mr. Shaw was previously incarcerated in the Neurodevelopmental Residential Treatment Unit (“NRTU”) at SCI Albion. However, in early November 2023, Mr. Shaw was transferred from the NRTU, a unique and effective therapeutic treatment environment, to the Residential Treatment Unit (“RTU”) at SCI Houtzdale. This transfer violated the Americans with Disabilities Act (“ADA”), as it has resulted in the denial of necessary disability accommodations that he cannot receive in other units. We ask that you take immediate action to transfer Mr. Shaw back to the NRTU at SCI Albion so that he can once again receive appropriate accommodations for his disabilities.

Mr. Shaw has a diagnosis of Autism Spectrum Disorder (“ASD”), Major Depressive Disorder, Borderline Personality Disorder, and social phobia. ASD is a complex neurodevelopmental condition that affects how people interact with others, communicate, learn and behave. Autistic individuals may experience sensory sensitivity, anxiety in unfamiliar locations or in social situations, have difficulty communicating, require routine or may find it hard to understand or interact with others in expected ways. Correctional institutions, which are almost always crowded, loud, and bright, present distinct challenges for autistic individuals.

Neurodevelopment Residential Treatment Unit (“NRTU”)

In 2021 the Neurodevelopment Residential Treatment Unit (“NRTU”) was created at SCI Albion, specifically designed for individuals on the autism spectrum. It is the only unit of its kind in the entire state prison system. Unit Manager Soliwoda has publicly explained that the NRTU differs from a normal housing unit in critical ways, and that it is crucial to addressing the needs of this population in

the DOC.¹ According to Mr. Soliwoda, the NRTU features a sensory room designed to help individuals calm down when they feel overwhelmed, as well as a private group room, a private yard, and a transitional cell for new arrivals. The NRTU also maintains a low population to reduce stimulation, allowing most residents to be single-celled, and enabling the specially trained staff to provide more individualized care. Finally, Unit Manager Soliwoda described the unit as a community, stating that the unit has resulted in positive outcomes, especially for people who might normally be reclusive, but are now active and participate in the NRTU community.

Mr. Shaw's Success in the NRTU

Mr. Shaw was originally placed in the NRTU in January 2022. Mr. Shaw characterizes the NRTU and his experience there in much the same way as Unit Manager Soliwoda did—as a community. Mr. Shaw felt safe there because of the small number of individuals housed on the unit and the services integrated into the unit. The fluorescent light covers accommodated his light sensitivity and the sensory room helped him avoid overstimulation. Programming within the NRTU, including groups and activities, provided crucial treatment to him. Moreover, the presence of the two staff psychologists on the unit facilitated his ability to access assistance when needed.

In addition to its structural modifications, the NRTU's trained staff and population of individuals with similar conditions provided Mr. Shaw with a space in which he did not have to “mask” or camouflage the behaviors he uses to soothe and self-regulate. Masking, which many autistic people do when around others who may not understand or accept them, is harmful to an individual's wellbeing and health. The NRTU provided Mr. Shaw with an environment in which he could safely regulate his emotions in the ways he found most effective, increasing his ability to comply with institutional rules and requirements.

Mr. Shaw's Removal from the NRTU

In 2023, DOC staff informed Mr. Shaw that, as of June 26, 2023, his father's wife began employment at SCI Albion and, based on the family relationship, PA DOC policy 11.1.1 required that Mr. Shaw transfer to a different institution. However, Mr. Shaw does not have a personal relationship with this individual, and has not had any contact with her for over five years. He has never shared a residence with her, nor received any financial assistance from her, and has not communicated with her during his time in the PA DOC. In response to Mr. Shaw's grievance regarding his impending transfer from the NRTU, the facility grievance coordinator stated that “there are many SCI's that are capable of providing the therapeutic milieu” that Mr. Shaw requires. This could not be further from the truth.

In early November 2023, Mr. Shaw was transferred from SCI Albion to SCI Houtzdale. This transfer removed him from his support system and community, an upheaval that is particularly difficult for autistic individuals. Mr. Shaw was initially housed in the RTU after his transfer to SCI Houtzdale. The transfer from the NRTU to the RTU at SCI Houtzdale significantly negatively impacted Mr. Shaw's treatment progress and mental health. In the RTU there is no sensory room, there are no fluorescent light covers, and the unit is significantly louder, which was overstimulating for Mr. Shaw. The RTU at SCI Houtzdale houses over 100 individuals, over twice the number housed in the NRTU. In addition, most individuals on the RTU are double celled. Although Mr. Shaw had a single cell while housed in

¹See <https://twitter.com/CorrectionsPA/status/1617956130747199488?lang=en> and <https://podcast.cor.pa.gov/2023/03/28/spotlight-on-sci-albions-nrtu/>

the RTU, he received no guarantee that he would be allowed to remain in a single cell. The possibility of being celled with another individual, which would remove his one location to self-regulate, was a source of stress for him. Further, the level of interaction between staff and the individuals housed on the RTU was significantly less than the level of interaction Mr. Shaw experienced on the NRTU. While the RTU offered isolated groups or activities for Mr. Shaw to participate in, it failed to provide the community support that Mr. Shaw needed in order to manage his disability successfully. Where he was previously engaged in groups, activities, and individual endeavors at SCI Albion, at SCI Houtzdale he spent most of his time in his cell.

Because of the RTU's failure to successfully accommodate his disability, Mr. Shaw requested and received a transfer to the Veterans Service Unit (VSU) at SCI Houtzdale, an option available to him as a former service member. Unfortunately, the VSU is also insufficient to meet Mr. Shaw's needs. The VSU is a dormitory style unit, a large room with bunk beds and lockers. Mr. Shaw shares his living area with multiple people, and has no quiet space to use when he needs a respite to avoid overstimulation. The unit has fluorescent lights and is consistently noisy. As a coping mechanism, Mr. Shaw will sometimes lay in his bunk and pretend to be asleep.

Ever since his transfer, Mr. Shaw has had to "mask" his needs and behaviors, which has significantly negatively impacted his mental health as he feels that it is not safe for him to be himself around staff and other incarcerated people who don't understand him. Overwhelmed by new environments, his anxiety levels have increased, both on the RTU and in the VSU dorm. His depression has also worsened over time, and as a result he was recently prescribed a new medication (Buspar) to manage his mental health symptoms.

Mr. Shaw's Right to Accommodations


Mr. Shaw's disabilities entitle him to the protection of Title II of the ADA, which prohibits public entities, including prisons, from discriminating against qualified individuals with disabilities in the provision of programs, services, and activities. *See* 42 U.S.C. § 12132, *et seq.* Courts have recognized that Autism is a disability under the ADA. *See, e.g., D.B. v. CorrectHealth E. Baton Rouge, LLC*, No. 19-620-JWD-EWD, 2020 U.S. Dist. LEXIS 139660, at *7-8, 53-54 (M.D. La. Aug. 5, 2020) (finding that placement of individual with ASD first in general population and then in a medical lockdown unit presented a claim under the ADA); *Latson v. Clarke*, 249 F. Supp. 3d 838, 854 (W.D. Va. 2017) (stating that ASD qualifies as a disability under the ADA); *see also* 28 C.F.R. § 35.108(d)(2)(iii)(E).

Virtually all programs offered by a prison, including medical care, mobility, and hygiene qualify as "services, programs or activities" under Title II. *See United States v. Georgia*, 546 U.S. 151, 157 (2006) (quoting 42 U.S.C. § 12132); *Yeskey v. Pennsylvania Dept. of Corrections*, 118 F.3d 168, 170 (3d Cir. 1997). Courts have repeatedly found that carceral institutions must provide accommodations to incarcerated people with disabilities. *See, e.g., Furgess v. Pa. Dep't of Corr.*, 933 F.3d 285, 292 (3d Cir. 2019) (finding that the Pennsylvania Department of Corrections' failure to provide an incarcerated person with access to a handicapped-accessible shower violated the ADA); *Paluch v. Lewis*, Civil Action No. 2:21-cv-1564, 2023 U.S. Dist. LEXIS 228431, at *16-18 (W.D. Pa. Dec. 22, 2023) (holding that plaintiff, an incarcerated person with carpal tunnel syndrome, stated a claim under the ADA based on defendant's failure to provide an assistive writing device).

Public entities have an affirmative duty under the ADA's implementing regulations to “make reasonable modifications in policies, practices, or procedures...to avoid discrimination on the basis of disability.” See 28 C.F.R. § 35.130(b)(7). The ADA also requires a public entity to “take appropriate steps to ensure that communications with [individuals] with disabilities are as effective as communications with others” and to provide “appropriate auxiliary aids and services” so that individuals with disabilities have “an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity.” See 28 C.F.R. § 35.160(a)(1), (b)(1). In order to fully participate in the programs, services, and activities available to him within the DOC, and to communicate effectively with staff, Mr. Shaw requires the accommodations so successfully provided by the NRTU: environmental modifications to manage stimuli, integrated programming by staff specifically trained to address the needs of those with ASD, and the purposeful creation of a community in which those with ASD need not mask their condition.

In light of the serious ADA violations described above, we ask that you take immediate action to transfer Mr. Shaw to the NRTU at SCI Albion where he will receive the appropriate accommodations for his disabilities. We ask that you respond in writing to this letter within thirty days. If you have any questions or concerns, you may contact Alexandra Morgan-Kurtz (amorgan-kurtz@pilp.org) or Evangeline Wright (ewright@pilp.org).

Sincerely,



Alexandra Morgan-Kurtz
Deputy Director



Evangeline Wright
Staff Attorney

cc: Timothy Holmes, tholmes@pa.gov
Chase DeFelice, chdefelice@pa.gov