DISABILITY RIGHTS NEW YORK

New York's Protection & Advocacy System and Client Assistance Program

Report and Recommendations Concerning Attica Correctional Facility's Residential Mental Health Unit

September 2017

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A. EXECUTIVE SUMMARY

Disability Rights New York (DRNY) is the designated federal Protection and Advocacy System for individuals with disabilities in New York State.[1] DRNY has broad authority under federal and state law to monitor conditions and investigate allegations of abuse or neglect occurring in any public or private facility, including state prisons.

DRNY monitored and investigated Attica Correctional Facility's Residential Mental Health Unit (RMHU), one of several residential mental health treatment units (RMHTU). The New York State Department of Corrections and Community Supervision (DOCCS) operates segregated disciplinary confinement units called Special Housing Units (SHU) and Long-Term Keeplock Units. Individuals diagnosed with serious mental illness must be removed from SHU or Long-Term Keeplock and placed into a RMHTU. The RMHTUs are jointly operated by DOCCS and the New York State Office of Mental Health (OMH).

DRNY conducted a site visit and in-person interviews at Attica in August 2015, corresponded with incarcerated individuals from August 2015 through December 2016, reviewed security and mental health records and policies, and communicated with DOCCS and OMH executive staff.

DRNY finds that DOCCS and OMH abused and neglected[2] RMHU participants, and violated New York Correction Law provisions governing RMHTUs, collectively known as the SHU Exclusion Law. Specifically, DRNY finds DOCCS and OMH violated New York Correction Law §§ 2(21), 401(1), 401(2), and 401(6).

1. DOCCS and OMH neglected and abused RMHU participants by imposing cell shields in the RMHU without consideration of an individual's mental health condition and without clinical input by OMH, in violation of the SHU Exclusion Law.

2. DOCCS's regulations fail to require OMH clinical input and consideration of mental health status before issuing and when renewing cell shield orders, thereby violating the SHU Exclusion Law.

3. DOCCS's use of cell shields in the RMHU violates state regulations and due process by failing to justify implementation and continuation of cell shield orders.

4. DOCCS and OMH neglected and abused RMHU participants by failing to clinically assess their therapeutic needs prior to imposing programming restrictions, despite the requirement of the SHU Exclusion Law, and by failing to provide a safe environment.

[1] DRNY is supported by the U.S. Department of Health & Human Services, Administration on Intellectual and Developmental Disabilities; Center for Mental Health Services, Substance Abuse & Mental Health Services Administration; U.S. Department of Education, Rehabilitation Services Administration; and the Social Security Administration. This report does not represent the views, positions, or policies of, or the endorsement of, any of these federal agencies.

[2] See Appendix for definitions of abuse and neglect.

5. DOCCS neglected RMHU participants and violated the SHU Exclusion Law by staffing the RMHU with SHU officers and other untrained staff. DOCCS continued to neglect individuals and violate the law by failing to correct the problem after notification by DRNY.

6. DOCCS and OMH neglected RMHU participants by providing "alternative therapy" cell-side, including in some cases when participants are behind cell shields, thereby denying RMHU participants appropriate treatment.

7. DOCCS does not provide an adequate therapeutic setting for RMHU participants.

DOCCS and OMH must take immediate action to ensure a therapeutic environment that is free from abuse and neglect.

B. BACKGROUND

The Attica RMHU is a non-disciplinary therapeutic unit. The RMHU is one of several programs jointly operated by DOCCS and OMH to provide an alternative to solitary confinement for individuals with serious mental illness who have been sentenced to disciplinary segregation for over 30 days. N.Y. Correction Law §§ 2(21), 137(6)(d), 401(1). The Attica RMHU is the smallest of the state's RMHTUs, with a ten-person housing unit. The RMHU permits participants to be out of their cells four hours each weekday for programming, and one hour each weekday for recreation. The program area consists of five classrooms of varying sizes and arrangements. One classroom has six "therapeutic cubicles," which are standalone mesh cages, each approximately the size of a large phone booth. Four classrooms have varying numbers of "Restart" chairs and some also have one or more therapeutic cubicles. A Restart chair uses a floor-level locking device to secure the individual to a chair using ankle restraints. A small desk is connected to the chair. DOCCS uses therapeutic cubicles and Restart chairs to provide programming in a secure environment.

The SHU Exclusion Law prescribes how the RMHTUs must operate. Individuals in the RMHTUs must "receive therapy and programming in settings that are appropriate to their clinical needs" while maintaining the safety and security of the unit. N.Y. Correction Law § 401(1). The clinical needs of individuals must be considered in the administration and day-to-day operation of the RMHU, including conditions in the housing unit. N.Y. Correction Law § 2(21). All "decisions about treatment and conditions of confinement shall be made based upon *a clinical assessment of the therapeutic needs* of the inmate and maintenance of adequate safety and security." N.Y. Correction Law § 401(2)(a)(iii) (emphasis added). DOCCS and OMH must also:

- take into account an individual's mental condition before placing restrictions on out-of-cell programming, N.Y. Correction Law § 401(2)(a)(iii);
- consider an individual's mental health needs when imposing restrictions on property, services, or privileges, N.Y. Correction Law § 401(2)(b);
- take into account an individual's mental health condition when reviewing that individual's disciplinary segregation sanctions, N.Y. Correction Law § 401(5)(b).

The SHU Exclusion Law contains a strong presumption that RMHU participants receive out-of-cell programming, N.Y. Correction Law § 401(2)(a), and a strong presumption that RMHU participants not be punished for conduct on the unit and not be removed from the therapeutic environment, N.Y. Correction Law § 401(5)(a).

1. Scope of Investigation

DRNY conducted monitoring at the Attica RMHU on August 19-21, 2015, pursuant to its authority as the Protection and Advocacy System in New York State. Prior to the monitoring visit, DRNY received complaints about discipline, restrictions, and the location of the RMHU adjacent to the SHU galleries.

During the monitoring visit, DRNY toured the RMHU and the programming area and interviewed eight RMHU participants and one SHU inmate who was later admitted to the RMHU. Between August 2015 and December 2016, DRNY corresponded with seven additional individuals about their experiences in the RMHU. Based on the monitoring visit and additional complaints, DRNY began an investigation into complaints of abuse and neglect. DRNY requested individual records, disciplinary records, mental health records, Plexiglas cell shield orders and renewals of orders, and documentation pertaining to out-of-cell programming restrictions. DRNY also requested policies, procedures, and handbooks, as well as information about DOCCS staffing. DRNY reviewed more than seven-hundred pages of such records.

2. Reported Allegations of Abuse and Neglect

People complained that the Attica RMHU differs little from a SHU because it operates in a punitive manner. The most troubling complaints related to the frequent presence of and alleged harassment of participants by SHU officers in the RMHU and the excessive use of cell shields.

All sixteen program participants reported that officers harassed and mistreated individuals in the unit. They attributed the tense environment to SHU officers who were assigned to posts in the RMHU, and they complained that both SHU and RMHU officers treat RMHU participants like they are on disciplinary status, similar to SHU inmates. Numerous participants reported that officers "hit people's triggers," caused them to "bug out," and exacerbated people's underlying mental health conditions to the point where they contemplated suicide or engaged in self-harm. Participants also complained that SHU officers issued misbehavior or negative informational reports, leading to cell shields and loss of program stage level. There were also complaints that officers reportedly retaliated against participants for filing grievances by withholding supplies or turning off hot water.

> *"The SHU officers verbally harass us [,] also by turning our water off, or our lights so we can't write. In the winter time, they open all the windows to freeze us out, throw water on us, and leave the window open all night."— Participant F, 7/2016*

Individuals interviewed had numerous complaints about the prevalence of cell shields in the RMHU. Complaints included that copies of cell shield orders and renewals were not provided to individuals who were under the orders, contrary to DOCCS regulation 7 NYCRR § 305.6(d)). DRNY received complaints about the heat in the cells in the summer and

poor ventilation caused by the cell shields. Individuals also complained that cell shields were used to punish people, that cell shields send the message that "we're animals," and that staff place new admissions under a cell shield when they first arrive to the unit. Additionally, DRNY received complaints regarding lack of confidentiality in communications with mental health staff due to the presence of security officers, and limitations on privileges and incentives as a result of the RMHU's location in the SHU building at Attica. One individual summarized the attitude of security staff as, "[t]his is Attica, and we do want we want, how we want, and if you don't like it, don't come to prison." Numerous RMHU participants complained to DRNY that DOCCS imposed SHU restrictions upon them because RMHU housing is physically located in the SHU.

Through the fall of 2016, DRNY continued to receive complaints about conditions in the unit, including that conditions were excessively punitive. RMHU participants also reported that they were facing retaliation for filing grievances.

C. INVESTIGATIVE FINDINGS

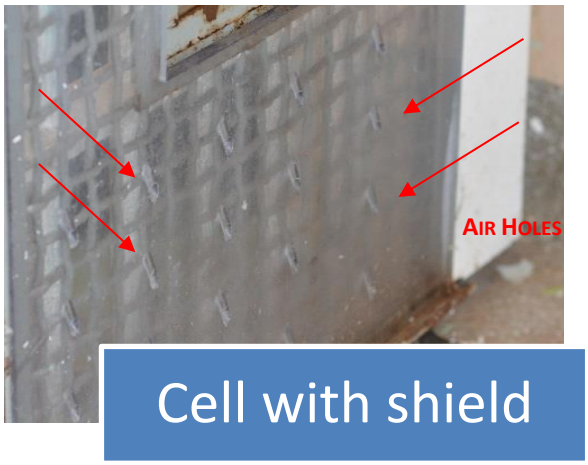
1. Cell Shields

FINDING 1:

DOCCS and OMH neglected and abused RMHU participants by imposing cell shields in the RMHU without consideration of an individual's mental health condition and without clinical input by OMH, in violation of the SHU Exclusion Law.

DOCCS and OMH fail to consider the risk to mental health in issuing and renewing—often, repeatedly—cell shield orders for individuals with serious mental illness. DOCCS and OMH consistently issued cell shields to individuals with very acute mental health needs, without consideration of their mental health condition and without clinical input by OMH staff.[3] Considering the serious impact cell shields can have on mental health, DOCCS excessively uses cell shields in the RMHU, and DOCCS's and OMH's practices violate the SHU Exclusion Law.

Cell shields are a restrictive device that can be affixed to an inmate's cell door. The cell shield is a sheet of Plexiglas with small air holes only at the bottom. In the Attica RMHU, the cells have bars that are covered with a metal mesh gate, and when there is no cell shield installed the air flows through the gate. Cell shields prevent the free flow of air into the cell and greatly diminish the ability to communicate with people outside the cell. Cell shields also impede visibility into the cell and from the cell out to the gallery.



Two cell shields were in place in the RMHU during DRNY's monitoring visit in August 2015. DRNY requested all cell shield orders for eight individuals who were in the RMHU to review regulatory compliance, reasons for cell shield use, consideration of individuals' mental status, and duration of cell shield orders. DOCCS produced five sets of cell shield orders for four individuals. Thus, half of the individuals had cell shields in place for at least some period of their confinement in the Attica RMHU.

[3] Where appropriate, DRNY has included complaint examples throughout this report. DRNY has assigned a pseudonym to each program participant because DRNY is required to keep the identity of complainants confidential. 45 C.F.R. § 1326.28(b)(1)(i)-(iv); 42 C.F.R. § 51.45(a)(1).

RMHU participants remain isolated in their cells nineteen hours a day, and more if they are also restricted from programming. Cell shields markedly deepen that isolation and heighten the risk of worsening mental health conditions. Additionally, hot temperatures during summer months create stress on individuals who are prescribed psychotropic medications that cause heat sensitivity. OMH specifically warns, "[t]hose in the greatest danger of succumbing to the most serious heat illnesses are . . . those taking certain medications, including psychotropic drugs." *See* New York State Office of Mental Health, "How to Deal with Heat Illnesses" (brochure), available at https://www.omh.ny.gov/omhweb/heat/HeatIllness.pdf (last accessed Mar. 15, 2017). By restricting air flow and ventilation, cell shields intensify the environmental stress for individuals.

DOCCS and OMH neglect and abuse RMHU participants by subjecting them to cell shields without consideration of the risk to participants' mental health state. Decisions about conditions of confinement must be "made based upon a clinical assessment of the therapeutic needs of the inmate and maintenance of adequate safety and security on the unit." N.Y. Correction Law § 2(21). DOCCS and OMH failed to perform clinical assessments of RMHU participants before imposing cell shields, causing injury to RMHU participants.[4]

The experience of Participant A is an example of DOCCS's and OMH's failure to take account of an RMHU participant's deteriorating mental health when imposing a cell shield. DOCCS continually subjected Participant A to a cell shield even after Participant A engaged in self-harming behavior and returned from a psychiatric hospital.

PARTICIPANT A

Participant A has both intellectual and mental health disabilities. He arrived at the RMHU in 2014. DOCCS immediately imposed a cell shield the day he arrived because of a past incident at Five Points and past unhygienic acts. DOCCS renewed the order repeatedly, for a total of three-hundred and seventy-nine continuous days. Participant A deteriorated while under the cell shield. In 2015, Participant A told staff he wanted to die. After being moved to the Residential Crisis Treatment Program (RCTP) for observation, he swallowed a straightened paperclip and was hospitalized. He returned to the Attica RCTP twenty-one days later; however, because he made no progress, nine days later, OMH transferred Participant A to CNYPC for psychiatric hospitalization. There, he told staff he self-harmed due to depression and hopelessness, and that he felt suicidal about being in the RMHU. CNYPC staff noted Participant A's extensive history of swallowing objects, his "poor insight and judgment," and his low intellectual functioning. CNYPC staff recommended that upon return to the prison:

[4] A cell shield is a condition of confinement. *See Willey v. Kirkpatrick*, 801 F.3d 51, 68 (2d Cir. 2015) (holding that district court which dismissed unsanitary conditions of confinement claim failed "to consider the effect that the cell shields would have in exponentially amplifying the grotesquerie of the odor of the accumulating [human] waste"); *Ruggiero v. Prack*, 168 F. Supp. 3d 495, 518-21 (W.D.N.Y. 2016) (finding that dispute over justification for cell shield orders and renewals and whether "it is possible to exercise in a 3' X 6' space inside of an unventilated cell covered in plexiglass" precluded summary judgment on Eighth Amendment conditions of confinement claim).

> Staff should continue to work on his developing and using coping skills. It is also important that [A] is in a placement where he can be closely monitored for any increase in the frequency or intensity of warning signs for suicide placing him at imminent risk of harm to himself, and that appropriate measures are implemented to maintain his safety if needed.

DOCCS ignored CNYPC's recommendations. As soon as Participant A returned to Attica, direct from three weeks of inpatient psychiatric care, DOCCS immediately renewed the original 2014 cell shield order, without any documented input from OMH staff. DOCCS justified renewing the shield order because Participant A spat at an officer in 2015. DOCCS also cited the Five Points incident and prior unhygienic acts. DOCCS renewed the order on these same grounds repeatedly. None of the renewal documentation referenced any recent behavior or contained any clinical assessment of Participant A's current mental health condition.

A period of adjustment with enhanced therapeutic supports is necessary when any patient transitions from a hospital setting to a correctional setting. Other jurisdictions have recognized this need. Administrators overseeing mental health in New York City jails transition people who are newly discharged from hospitals to a mental health unit called the Program for Accelerating Clinical Effectiveness (a.k.a. PACE Hospital Step-Down unit) on Rikers Island. Patients in PACE units may move around the unit except during count and the nighttime lock-in period, have easy access to clinicians whose offices are located on the unit, have access to a large common area, and participate in individual and group therapy on the unit.[5]

DOCCS and OMH do not provide a similar therapeutic environment for RMHU participants, as shown by the lengthy use of cell shields without assessment of an individual's therapeutic needs, even after an extended psychiatric hospitalization. Disturbingly, DOCCS also places individuals behind a cell shield after an admission to the RCTP for crisis observation and stabilization, without any clinical assessment or other input from OMH staff required by N.Y. Correction Law § 2(21).

[5] This therapeutic environment has been successful: PACE units "have resulted in increased adherence to medical regimens, reduced injuries to patients and fewer uses of force." *Oversight: Evaluating Recent Changes in Healthcare in City Correctional Facilities Before New York City Council Comm. on Health, Fire and Criminal Justice Services, Mental Health, Developmental Disability, Alcoholism, Substance Abuse and Disability Services* (May 26, 2016) (Testimony of Patricia Yang, Senior Vice President, NYC Health + Hospitals).

PARTICIPANT B

DOCCS imposed a cell shield on Participant B for over one month in 2015 for reaching through a door hatch that had been locked. The cell shield order stated Participant B "create[d] a potential safety and security issue" and his "behavior is extremely disruptive and adversely effects the proper operation of the RMHU unit." During this time, Participant B had episodes reflecting his poor mental state. Participant B threatened self-harm and was admitted to the RCTP within one week of DOCCS initially ordering the cell shield. In a meeting with the psychiatrist three days after his RCTP admission, Participant B reported suicidal ideation and that he was "depressed due to recent punishments from [corrections officers]." The psychiatrist increased Participant B's psychiatric medications following this interview and authorized his release from RCTP. Participant B returned to the RMHU with the cell shield in place.

Even though Participant B reported thoughts of self-harm, suicidal ideation, and depression regarding punishment in the RMHU, the clinical record contains no documentation that DOCCS and OMH consulted regarding the cell shield prior to imposing it or following Participant B's RCTP admission.

DOCCS's use of cell shields in the RMHTUs without OMH clinical assessment of individuals' mental health needs exposes people with serious mental illness to a risk of harm and violates N.Y. Correction Law § 2(21). OMH fails to meet its obligation to ensure that the "therapeutic needs of the inmate" are considered in programs that OMH jointly operates with DOCCS, because OMH simply defers to DOCCS regarding appropriateness of cell shield use in the RMHTUs. N.Y. Correction Law § 2(21). In December 2016, DRNY inquired about OMH's role in the application of a cell shield order in the Great Meadow Behavioral Health Unit. The Director of CNYPC demurred in response to DRNY's inquiry, stating "DOCCS is responsible for disciplinary sanctions, therefore, CNYPC defers to DOCCS to address DRNY's inquiry regarding cell shield orders and episodes of Exceptional Circumstances."[6] Similarly, in response to a letter concerning restrictions placed on an incarcerated woman in the Therapeutic Behavioral Unit, a mental health program, at Bedford Hills Correctional Facility, the CNYPC Director stated, "your inquiries related to disciplinary status, history and exceptional circumstances should be directed to the Department of Corrections and Community Supervision."[7] DRNY understands OMH's deference to DOCCS to apply statewide through all the RMHTUs. DOCCS and OMH neglect and abuse RMHU participants, by failing to provide a safe environment for RMHU participants and by rendering care or treatment which causes injury. 42 U.S.C. § 10802.

[6] Letter from Lori Schatzel, Director, Central New York Psychiatric Center, to Elena Landriscina, Staff Attorney, DRNY (Jan. 12, 2017).
[7] Letter from Lori Schatzel, Director, Central New York Psychiatric Center, to Elena Landriscina, Staff Attorney, DRNY (Mar. 30, 2017).

FINDING 2:

DOCCS's regulations fail to require OMH clinical input and consideration of mental health status before issuing and when renewing cell shield orders, thereby violating the SHU Exclusion Law.

DOCCS's cell shield regulations do not require consideration of an individual's mental health condition prior to and after imposing the harsh restriction of a cell shield and, as such, violate the SHU Exclusion Law.

CELL SHIELDS

DOCCS imposed a cell shield on Participant D immediately following his arrival to the RMHU in 2015. In this case, the individual was behind a cell shield for 59 days. The reason for the order was an unhygienic act at his previous facility and "an extensive history of Unhygienic Acts." The individual also received 240 days of SHU for the incident. DOCCS repeatedly renewed the order on the same grounds without any new alleged misbehavior.

Cell shields may only be imposed for "good cause" including: "(1) Spitting through the cell door, or the throwing of feces, urine, food, or other objects through the cell door. (2) The inmate refuses to keep his/her hands within the cell and/or otherwise attempts to assault or harass staff. (3) The inmate is so disruptive as to adversely affect the proper operation of the unit." 7 NYCRR § 305.6(b).

DOCCS applies the cell shield regulations to all individuals, regardless of their disabilities or their placement in a therapeutic unit. Moreover, DOCCS has not adopted any policy regarding limitations on the use of cell shields in RMHU. DOCCS's operational policy for the Attica SHU (where the RMHU is located) describes cell shield procedures, but does not require any consideration of mental health condition for RMHU participants. DOCCS Facility Operations Manual # 3.404: Special Housing Unit (2nd & 3rd Floors) Reception Building, at pg. 10. Cell shields are not addressed in the Attica RMHU Program Operations Description or Inmate-Patient Handbook. DOCCS's policies, therefore, violate the SHU Exclusion Law.

FINDING 3:

DOCCS's use of cell shields in the Attica RMHU violates state regulations and due process by failing to justify implementation and continuation of cell shield orders.

DOCCS's practices regarding cell shields violate the minimum standards in DOCCS's current regulations, because DOCCS justifies continuing cell shield orders for weeks or months based on past behavior. DOCCS also violates RMHU participants' due process rights by failing to conduct a meaningful review of the appropriateness of the cell shields.

A cell shield order is valid only for seven days, but may be renewed. 7 NYCRR § 305.6(c). DOCCS must document a brief statement of the reason for the initial order and any renewal. *Id.* § 305.6(d).

However, DOCCS liberally renews orders even where there is no new misbehavior for excessive periods. Of the records reviewed, the shortest cell shield was in effect for thirty-two days, while the longest cell shield was in effect for three-hundred and seventy-nine days. In both these cases, the cell shields were renewed repeatedly based on past behavior. DRNY found the same typographical error repeated in each renewal for one participant, which underscores the perfunctory nature of the renewals.

Use of dated information for cell shields violates the requirement that cell shields be limited in duration, because an initial order is "valid for no more than seven days." 7 NYCRR § 305.6(c). As noted above, regulation 7 NYCRR § 305.6(b) requires DOCCS to document a reason or "good cause" for ordering the cell shield, and the regulation uses examples of behavior meeting this standard. The examples defining "good cause" in DOCCS regulations also make clear that the reasons for imposing and renewing a cell shield must be based upon current or recent behavior ("refuses to", "is so disruptive"), not behavior that occurred in the past. 7 NYCRR § 305.6(b). State regulations require "a statement as to the need for *continuing* the cell shield order." 7 NYCRR § 305.6(d). DOCCS violated this requirement by relying on past conduct to continue the order. Relying on past conduct renders the renewal procedure entirely superfluous and nothing more than a rubberstamp.

Furthermore, due process requires much more. There must be an actual evaluation of whether the order is justified at the time of renewal and there must be consideration of any new relevant information. *See Proctor v. LeClaire*, 846 F.3d 597, 610-11 (2d Cir. 2017) (stating that meaningful review requires actual evaluation of whether the continued measure is justified, including consideration of "new relevant evidence as it becomes available"). Simply rehashing stale information to justify a cell shield for weeks or months is a gross violation of procedural due process.

DRNY found that DOCCS repeatedly renewed long-standing cell shield orders on four individuals with serious mental illness, including one individual with co-occurring low intellectual functioning, with limited documentation of ongoing safety and security concerns as required by DOCCS's regulations. The renewal orders were simply *pro forma*, lacking any meaningful assessment of current behavior to establish "good cause" for the restriction and without any consideration of participants' deteriorating mental condition under extremely isolating conditions. DOCCS failed to meet the standards for continuing the cell shield orders and violated RMHU participants' due process rights.

2. Restrictions on Out-of-Cell Programming and Therapy

FINDING 4:

DOCCS and OMH neglected and abused RMHU participants by failing to clinically assess their therapeutic needs prior to imposing programming restrictions, despite the requirement of the SHU Exclusion Law, and by failing to provide a safe environment.

DOCCS and OMH failed to clinically assess the needs of RMHU participants before restricting participants from access to out-of-cell programming and treatment. The result of such restrictions is twenty-three-hour cell confinement, as RMHU participants lose the four hours of out-of-cell programming offered five days a week.

Under the SHU Exclusion Law, the strong presumption in favor of RMHU participants attending programming may only be overcome with a determination, documented in writing, that a participant's access to out-of-cell programming or treatment "presents an unacceptable risk to the safety of inmates or staff." N.Y. Correction Law § 401(2)(a)(i). Such restrictions are to be rare and "exceptional." N.Y. Correction Law § 401(2)(a)(i). Only a mental health clinician, or the highest ranking facility security supervisor in consultation with a mental health clinician who has interviewed the inmate, may determine that out-of-cell programming poses an unacceptable risk of safety to other inmates or staff. N.Y. Correction Law § 401(2)(a)(i). The law specifically requires that the determination to restrict out-of-cell programming must "take into account the inmate's mental condition and any safety and security concerns." N.Y. Correction Law § 401(2)(a)(iii). *See also* N.Y. Correction Law §2(21) (stating RMHUs "shall not be operated as disciplinary housing units, and decisions about treatment and conditions of confinement shall be made based upon a clinical assessment of the therapeutic needs of the inmate and maintenance of adequate safety and security on the unit").

DRNY reviewed DOCCS documentation of out-of-cell restrictions and found that programming restrictions were uniformly imposed without accounting for the individuals' mental health condition as required by N.Y. Correction Law § 401(2)(a)(iii). The form entitled "Reports of Exceptional Circumstances RMHTU Program," which is used by DOCCS and OMH to document these restrictions, reflects the reason for the restriction, the date imposed, the alternative therapy to be offered "as determined by OMH," and the signatures of the security and mental health staff in approving the restriction. The form does not require documentation that a clinical assessment was performed.

PARTICIPANT A

Participant A told OMH staff he wanted to leave the program classroom to avoid being around people who angered him. OMH staff noted his agitation. Participant A returned to his cell without incident. OMH clinical staff nevertheless issued a misbehavior report for threats and disturbing the classroom, and a hearing officer imposed a one-hundred and twenty-day SHU sanction. Then, DOCCS and OMH restricted Participant A from

attending all out-of-cell programming for eighteen days, relying on Participant A's verbal statement as justification. After the restriction ended, Participant A engaged in self-harm and reported hopelessness. Participant A was subsequently hospitalized at CNYPC, and CNYPC staff focused on helping him to develop coping skills and remain engaged in therapy. Staff also encouraged Participant A to "verbally acknowledge to staff times when he is angry and ask for a time out." Participant A mingled with peers, attending treatment mall programming and socializing appropriately. Participant A's success at CNYPC indicates that Attica RMHU's punitive approach was not clinically justified under N.Y. Correction Law § 401(2)(a)(i), and needlessly contributed to further deterioration in his condition requiring inpatient hospitalization.

OMH neglected the mental health needs of participants by failing to conduct clinical assessments before placing restrictions on out-of-cell programming and treatment. When OMH omits these assessments, OMH fails to consider the constellation of factors, including environmental stressors, at the root of an individual's reported mental distress. For example, by the time of the classroom incident, Participant A had been behind a cell shield for two-hundred and thirty-seven consecutive days. His mental condition and the extremely isolating condition of confinement were not considered, and the out-of-cell programming restriction was imposed without heed to the requirements of N.Y. Correction Law § 2(21) and § 401(2)(a)(iii). An informed assessment of an individual's therapeutic needs must include consideration of the restrictive conditions being imposed.

PARTICIPANT C

Participant C has schizoaffective disorder and bipolar disorder. DOCCS restricted Participant C from programming in 2016 after he threatened security staff. The same day the restriction was imposed, OMH staff noted Participant C had been doing well in the RMHU overall, but had recently "been struggling with security," had sporadic medication compliance, and had limited coping skills and insight. The social worker did not determine that a restriction from programming was warranted. To the contrary, the social worker recommended a plan to include: "Regular RMHU structure. Regular daily rounds, 1:1 therapy as needed, psychiatric visits as scheduled. 4 hours of group will also be given per day." DOCCS then ordered in-cell restrictions for Participant C, in stark contrast to OMH staff's assessment of his therapeutic needs—including the plan to continue programming. Participant C remained under programming restrictions for nine days, despite complaints to a psychiatrist five days into the restriction that he was "getting worse." None of the psychiatrist's notes reflect consultation with DOCCS regarding the patient's therapeutic needs or the programming restriction.

Clinical assessments are integral to ensuring that conditions are appropriate in the RMHTU. N.Y. Correction Law §§ 2(21), 401(a)(iii). Participant C is an example of how DOCCS and OMH fail to consider an individual's therapeutic needs. The psychiatrist should have investigated the nexus between Participant C's behavior, the recent difficulties Participant C was having on the unit as noted by his social worker, and his mental health complaints, and then developed a treatment plan to assist Participant C. The psychiatrist should have advised DOCCS about appropriate treatment or accommodations. Instead, OMH and DOCCS did not consult despite the requirement of the SHU Exclusion Law, leading to Participant C's continued programming restrictions.

DOCCS and OMH have not integrated clinical assessments into decisions to preclude RMHU participants from programming. DOCCS and OMH staff fail to engage individuals who have complex behavioral issues and extensive psychiatric histories by not identifying and reinforcing positive strategies that would enable them to continue to access and benefit from RMHTU programming. When multiple deprivations are imposed at once, the individuals experience the RMHU as punitive segregation because it is as restrictive as SHU. The combination of cell shields, disciplinary segregation, and restrictions on programming authorized by DOCCS and OMH only work to further participants' isolation. This should not be happening especially because OMH staff independently observe RMHU participants' worsening mental health conditions. This is abuse and neglect and is contrary to the purpose of the SHU Exclusion Law.

3. DOCCS Staff Training

FINDING 5:

DOCCS neglected RMHU participants and violated the SHU Exclusion Law by staffing the RMHU with SHU officers and other untrained staff. DOCCS continued to neglect individuals and violate the law by failing to correct the problem after notification by DRNY.

DOCCS failed to train officers assigned to the RMHU, violating the SHU Exclusion Law. The SHU Exclusion Law requires that "new corrections officers, and other new department staff who will regularly work in programs providing mental health treatment," and "[a]ll department staff who are transferring into a residential mental health treatment unit" receive specialized training on mental health. N.Y. Correction Law § 401(6). Specialized training is to cover "the types and symptoms of mental illnesses, the goals of mental health treatment, the prevention of suicide and training in how to effectively and safely manage inmates with mental illness." *Id.* The objective of the law is preparing staff to address the special needs of individuals with serious mental illness and thereby support the overall mission of the RMHTUs. Unlike corrections officers in the RMHTUs, SHU officers are not required to undergo this training.

DRNY received numerous complaints from RMHU participants about officers. Many complaints identified SHU officers assigned to Tour II and Tour III (the afternoon/early evening shift and the late-night shift) in alleged incidents of abuse and the denial of RMHU privileges and basic needs. For example, three participants independently alleged that one named SHU officer antagonized the RMHU participants, falsely reported misbehavior that served as the basis for cell shields, and denied showers and hot water on holidays. Similarly, two participants identified another SHU officer and alleged that the officer is someone who "is assigned to SHU, but always agitating RMHU patients" and who also falsified misbehavior reports.

PARTICIPANT COMMENTARIES

"I have found the programs to be helpful as, perhaps mostly I've learned to have much better control over my emotions. . . . Often, 'security concerns' run counter to the beneficial or positive intentions of the programs. Not all COs are empathetic or sympathetic to the needs of prisoners with serious mental health issues and, in fact, if anything, do things which tend to aggravate the problems of prisoners with these issues . . . . Attica in particular is a case in point, as there are many times when there are no RMHU officers present and thus we have no choice but to have to deal with regular SHU officers."—Participant B, 10/2015

"Officers…on the RMHU are the same officers who work SHU."—Participant E, 8/2016

"On the weekends and mid-night shift regular Special Housing Unit COs work and deal with us and are not properly trained to. . . . We are treated like SHU inmates, and held to the strict standards of SHU inmates and environment."—Participant F, 7/2016

"We are subjected to the same Attica population/SHU staff attitude."–Participant G, 10/2016

"Nearly all CO and security staff do not want the program operated because they believe because we're in prison we deserve to suffer. This attitude is carried out in their daily dealings."–Participant H, 8/2016

Given the volume of complaints about SHU officers, DRNY investigated the presence of SHU officers in the unit. Complaints regarding SHU officers working in the RMHU are longstanding. In December 2011, when reviewing compliance with the settlement in *Disability Advocates Inc. v. NYS Office of Mental Health*, 02-CV-4002 (S.D.N.Y.), DRNY and plaintiff's co-counsel alerted DOCCS and OMH to RMHU inmates' reported difficulties with SHU officers, who are not trained to work in mental health programs. "Patients' satisfaction with the Attica RMHU was low compared with the larger RMHU programs. . . . . Patients reported more difficulties with SHU officers assigned to the night shifts than the RMHU officers assigned during the day, who are trained to work with RMHU patients."[8]

DRNY had recommended, "An increase in the number of specially trained and assigned RMHU officers is needed to cover all shifts. If that is not possible, then further training of SHU officers assigned to the RMHU gallery is warranted." DOCCS failed to address DRNY's concern in 2011.

Following the August 2015 visit, DRNY shared concerns about SHU staff working in the RMHU with DOCCS by letter dated November 25, 2015. To investigate this matter further, DRNY requested information about the staffing of the RMHU by SHU Officers, including the names of officers who had received specialized mental health training.

In response, DOCCS confirmed that SHU officers staff the RMHU during certain shifts. Specifically, DOCCS acknowledged that SHU officers "conduct rounds in the housing gallery of RMHU inmates on off shifts" and that SHU officers cover all three shifts of the RMHU on weekends and holidays.[9] DOCCS also acknowledged that the SHU officers had not undergone

[8] Letter from Nina Loewenstein, Senior Staff Attorney, Disability Advocates Inc., to Richard Brewster, Assistant Attorney General (Dec. 5, 2011).
[9] Letter from Bryan Hilton, Assistant Commissioner, DOCCS, to Elena Landriscina, Staff Attorney, DRNY (Dec. 15, 2015).

the specialized training, reasoning that "[t]he assigned SHU officers . . . do [] not meet the criteria set in the SHU Exclusion Law." *Id.* DOCCS has, therefore, narrowly interpreted the training requirement to exclude officers who are primarily assigned to work in other units but also work in the RMHU.

Contrary to DOCCS's report that SHU officers provide coverage in the RMHU only on night shifts, weekends, and holidays, DRNY found that SHU officers were in fact present during the weekday and issued misbehavior reports and negative informational reports, indicating a considerable degree of interaction with RMHU participants. DOCCS also confirmed that one officer, although not identified as a regular SHU officer, worked in the RMHU despite not having received training required by the SHU Exclusion Law.[10] Approximately 36 percent (22 of 61) of negative informational reports issued by corrections officers to eight participants between January 2015 and November 2015 were authored by officers who had not received the required training.[11]

REPORTS ISSUED BY OFFICERS WITHOUT N .Y. CORRECTION LAW § 401(6) TRAINING
Wed., 8/5/15 7:35 PM - Misbehavior Report
Tues., 8/18/15, 5:00 PM - Negative Informational Report
Tues., 3/3/15, 11:30 AM - Negative Informational Report
Tues., 7/28/15, 10:10 AM - Negative Informational Report
Mon., 8/3/15, 8:00 AM - Negative Informational Report
Tues., 11/3/15, 11:40 AM - Negative Informational Report
Wed., 11/4/15, 11:00 AM - Negative Informational Report
Tues., 8/18/15, 5:00 PM - Negative Informational Report
Sun., 3/8/15, 10:39 PM - Misbehavior Report
Thurs., 5/28/15, 9:00 PM – Negative Informational Report
Thurs., 5/28/15, 9:00 PM - Negative Informational Report
Tues., 6/30/15, 6:18 PM – Negative Informational Report
Wed., 7/8/15, no time given - Negative Informational Report
Fri., 7/10/15, 4:25 PM – Negative Informational Report
Fri., 7/24/15, 5:50 PM - Negative Informational Report
Fri., 7/31/15, 5:30 PM – Negative Informational Report
Mon., 8/3/15, 4:30 PM – Misbehavior Report
Mon., 8/3/15, 5:40 PM - Negative Informational Report
Mon., 8/3/15, 6:30 PM – Negative Informational Report
Tues., 8/4/15, 6:00 PM - Negative Informational Report
Wed., 8/19/15, 5:30 PM – Misbehavior Report
Wed., 9/2/15, 5:30 PM - Negative Informational Report
Fri., 9/4/15, 5:35 PM - Negative Informational Report
Wed., 9/9/15, 5:30 PM – Negative Informational Report

[10] Letter from Bryan Hilton, Assistant Commissioner, DOCCS, to Elena Landriscina, Staff Attorney, DRNY (Dec. 15, 2015).

[11] This is a conservative estimate. DRNY compared the names of officers who authored negative informational reports against a list of RMHTU-trained officers and SHU officers. If a report was issued by a corrections officer who did not appear on either list, DRNY counted the officer as belonging to the trained category. There were nine such reports.

Tues., 9/9/15, 5:30 PM – Negative Informational Report
Thurs., 10/15/15, 11PM-7AM shift – Negative Informational Report

In August 2016, in response to DRNY's multiple communications on this issue, DOCCS reported that it acted on DRNY's concerns by making "[e]very effort to include Special Housing Officers, who do not fall under the SHU Exclusion Law, into the [June 2016 RMHTU] training." For SHU officers scheduled to be on vacation during the training, DOCCS offered overtime pay to incentivize officers to attend the training.[12] Therefore, SHU officers were invited—but not required—to attend the most recent training.

DRNY finds that DOCCS violated the SHU Exclusion Law's training provisions in 2015 by having SHU officers and other untrained officers work with individuals in the RMHU. While DOCCS considered DRNY's concerns for the 2016 training, DOCCS's efforts do not go far enough. All officers who regularly work with RMHTU participants must be trained under the law. The training ensures that staff's interactions with RMHTU participants are consistently informed by a therapeutic model. Staff learn to recognize signs of mental illness, the importance of mental health treatment, and strategies towards positively reinforcing participants' progress and rehabilitation. RMHTU participants are a high-needs population, as evidenced by the fact that during a six-week period from September 2016 to mid-October 2016, "five of the ten RMHU participants had an RCTP admission."[13] In fact, admissions from the RMHU to the RCTP increased dramatically, from sixteen admissions in 2015 to forty admissions in 2016. By not requiring all officers to attend the RMHTU training, DOCCS has not complied with the statutory training mandate. The lack of this critical officer training adversely impacts the effectiveness of the unit and undermines participants' success in the RMHU. DOCCS neglects RMHU participants by not having adequate numbers of trained staff.

4. Confidential Mental Health Treatment

FINDING 6:

DOCCS and OMH neglected RMHU participants by providing "alternative therapy" cell-side, including in some cases when participants were behind cell shields, thereby denying RMHU participants appropriate treatment.

DOCCS and OMH fail to provide effective treatment to RMHU participants who are restricted from out-of-cell programming in two instances: first, when OMH delivers mental health services cell-side only, and second, when cell-side services are offered with a cell shield in place. Such practices violate the SHU Exclusion Law. N.Y. Correction Law § 401(2)(a)(i). They also constitute neglect.

[12] Letter from Bryan Hilton, Assistant Commissioner, DOCCS, to Elena Landriscina, Staff Attorney, DRNY (Aug. 18, 2016).
[13] Letter from Lori Schatzel, Director, Central New York Psychiatric Center, to Elena Landriscina, Staff Attorney, DRNY (Dec. 12, 2016).

OMH must provide "alternative mental health treatment and/or other therapeutic programming," to participants who are restricted from attending out-of-cell programming and treatment. N.Y. Correction Law § 401(2)(a)(i). "Alternative treatment" often consists of cell-study materials and cell-side discussions with OMH staff. However, those subject to out-of-cell restrictions are likely to be the people most in need of therapeutic interventions, including private one-on-one sessions, to address problematic behavior or a deteriorating mental state contributing to behavioral problems.

In eleven of the fifteen cases reviewed where out-of-cell restrictions were imposed, DOCCS and OMH noted alternative therapy. Frequently, however, the only type of alternative therapy provided was "cell side interviews," which are conversations between OMH staff and the individual at the cell front. Flanked by other cells, all cell-side discussions can be overheard by other RMHU participants. This interaction lacks any confidentiality and is not conducive to delivering effective mental health services. In fact, eleven individuals complained about difficulties communicating with mental health staff while in the RMHU housing area; in particular, RMHU participants said that confidential discussions with mental health staff were not possible due to the presence of corrections officers. Three individuals said that due to the presence of officers nearby, they were unwilling to discuss their needs and concerns with mental health staff cell-side.

Cell-side interviews do not provide an opportunity for therapeutic services required by N.Y. Correction Law § 401(2)(a)(i). DOCCS and OMH cannot rely exclusively on cell-side conversations to satisfy the statutory requirement of providing "alternative therapy" to individuals with serious mental illness who are confined to their cells. DOCCS must augment the alternative treatment to include private, one-on-one sessions with mental health staff. Private sessions with mental health staff ensure that a person subject to out-of-cell programming restrictions does not remain in twenty-three-hour isolation as in the SHU, thus reducing the risk that isolation will cause psychiatric deterioration. Providing the private sessions is key to fulfilling the mandate that the RMHU "shall not be operated as disciplinary housing units." N.Y. Correction Law § 2(21).

Most disturbingly, DRNY found that OMH offered cell-side interviews to RMHU participants who were under a cell shield order issued by DOCCS. Effective treatment is not possible when individuals are forced to publically communicate their mental health needs to OMH staff through a cell shield. Yet, DOCCS and OMH required RMHU participants to receive part of their therapeutic services through a thick Plexiglas covering that impedes, if not makes impossible, any meaningful communication. Through these practices, DOCCS and OMH fail to carry out an appropriate treatment plan, neglecting the serious needs of individuals with mental illness in the RMHU.

5. Location of RMHU

FINDING 7:

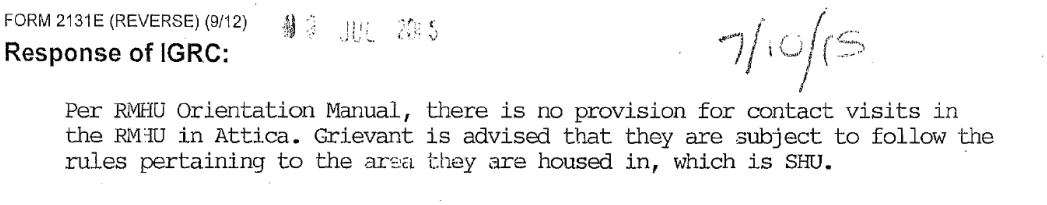
DOCCS does not provide an adequate therapeutic setting for RMHU participants.

The current RMHU housing location does not serve participants in the program.[14] Not only have disciplinary SHU operations bled into the RMHU, as discussed at length in this report, but DOCCS also concedes that administration of the RMHU program is impacted by limitations of the physical plant.

DOCCS made the decision to staff the RMHU with SHU officers because the RMHU's proximity to the SHU galleries on the same floor allows for this staffing efficiency. *See* DOCCS Facility Operations Manual # 3.404: Special Housing Unit (2nd & 3rd Floors) Reception Building (9/27/16). Yet, this efficiency has greatly diminished the therapeutic environment, as shown by consistent complaints since 2011 about SHU officers and recent examples of discipline and restrictions by officers who have not been trained as required by N.Y. Correction Law § 401(6).

DOCCS acknowledges that it operates the Attica RMHU differently from other RMHTUs. In some respects, DOCCS treats the program as though it is SHU: DOCCS's written facility operations policy identifies RMHU housing as the north gallery on the second floor of SHU. *See* DOCCS Facility Operations Manual # 3.404: Special Housing Unit (2nd & 3rd Floors) Reception Building (9/27/16). Additionally, below is an example of DOCCS's written response to a grievance filed by an RMHU participant. In this example, DOCCS informs the RMHU participant that rules applicable to the SHU also apply to RMHU participants by virtue of their location:

DOCCS Response to Participant Grievance



FORM 2131E (REVERSE) (9/12)

Response of IGRC:

JUL 7/10/15

Per RMHU Orientation Manual, there is no provision for contact visits in the RMHU in Attica. Grievant is advised that they are subject to follow the rules pertaining to the area they are housed in, which is SHU.

RMHU participants said that they do not receive typical RMHTU incentives, such as showers, phone calls, and recreation, despite earning them through positive progression in the program. DRNY found that the age and design of Attica's facilities means that the RMHU program operates differently, including in the provision of incentives. DOCCS has reportedly made efforts to

[14] It is important to note that this housing unit was never intended to support individuals who are participating in a robust mental health program. The history of litigation involving Attica and this particular housing unit make this clear. Prior to *Eng v. Goord*, this housing gallery was part of the SHU, where prisoners with serious mental illness were isolated, along with others, with no access to programming. The *Eng* litigation resulted in the establishment of the Special Treatment Program (STP), which provided two hours of programming to Attica SHU inmates. The STP program was closed upon the effective date of the SHU Exclusion Law in July 2011, because it did not comply with the law's requirements. After the *DAI* litigation, DOCCS elected to locate the RMHU participants within this same housing unit, and they have remained there following implementation of the SHU Exclusion Law.

standardize incentives across all RMHTUs, but the Attica RMHU is not designed like newer facilities at Marcy and Five Points, where the other RMHUs are located. For example, DOCCS acknowledged that the new facilities at Marcy and Five Points have phone systems built into the housing and program units, making it easier for DOCCS to provide phone calls when a participant earns that incentive. Phone calls are deeply important to the Attica RMHU population, and participants who spent time at the RMHUs at Marcy and Five Points compared their experiences with Attica. They explained that at Attica, staff gave participants fewer opportunities to make phone calls. If family did not answer the phone, the call was still "counted" by Attica staff, whereas Marcy and Five Points staff would assist an individual in re-attempting the call at a later time. DRNY did not independently confirm how phone call attempts are tracked, but based on DOCCS's response to its query on incentives, it is clear that a different practice at Attica has emerged due at least in part to structural limitations of the facility.

Additionally, the Attica RMHU is not a standalone unit, as it is in Marcy or Five Points. Thus, new admissions or incidents occurring within other parts of the Attica SHU can impact and interrupt the movement of RMHU participants. Attica RMHU participants thereby experience greater disruptions in programming than Marcy or Five Points participants. RMHU participants complained that they were not being afforded the full four hours of out-of-cell programming, because any movement in the nearby SHU results in termination of movement of any RMHU participants.

For all these reasons, the Attica RMHU housing location is not equipped to support the therapeutic program.

D. RECOMMENDATIONS

1. Cell Shield Orders

Cell shields should be presumptively excluded from use in the RMHTUs, as fundamentally contrary to the SHU Exclusion Law's intended purpose that individuals with serious mental illness shall receive therapy and support, not isolation and punishing conditions of confinement. DOCCS and OMH must adopt standards and procedures, including amendments to 7 NYCRR § 305.6, setting forth strict criteria that must be met to overcome the presumption against cell shields in the mental health programs. The standards and procedures should incorporate the SHU Exclusion Law's mandate to ensure that "settings . . . are appropriate to [participants'] clinical needs" and, more specifically, that "treatment and conditions of confinement shall be made based upon a clinical assessment of the therapeutic needs of the inmate" in addition to safety considerations. N.Y. Correction Law §§ 2(21), 401(1). Because the RMHTUs are the joint responsibility of DOCCS and OMH, both agencies have a duty to ensure that conditions in the RMHTUs are therapeutic and consistent with safety and security. N.Y. Correction Law § 401(1). OMH's deference to DOCCS is causing psychiatric harm to its patients, and does not fulfill the legal mandate of joint operations.

2. Restrictions on out-of-cell programming and treatment

DOCCS and OMH must ensure that any restrictions on out-of-cell programming and treatment meet the "unacceptable risk" standard set forth in N.Y. Correction Law § 401(2)(a)(i). DOCCS and OMH must ensure that the restriction is based on "a clinical assessment of the therapeutic needs of the inmate" and "take into account the inmate's mental condition," in addition to safety and security considerations. N.Y. Correction Law §§ 2(21), 401(2)(a)(iii). OMH must assess an individual's mental condition and therapeutic needs *prior* to the imposition of the restriction and throughout the duration of the restriction and stop deferring to DOCCS for decision making. Assessments should be documented in writing in both the security record and the individual's clinical record. Such writing should include documentation of the discussion between the mental health clinician and security staff, and detail how the restriction will be implemented to serve the therapeutic needs of the participant.

3. Required training for all DOCCS corrections staff who regularly cover the RMHU

DOCCS and OMH must meet the training mandate of N.Y. Correction Law § 401(6) for all staff who work in RMHU housing or programming, including staff working during off-shifts, holidays, and weekends.

4. Mental Health Treatment

DOCCS and OMH must ensure that individuals who are subject to restrictions on out-of-cell programming and treatment receive effective alternative therapy. N.Y. Correction Law § 401(2)(a)(i). This means DOCCS and OMH must facilitate an individual's confidential sessions with mental health staff during the period of restrictions. When an individual's behavior results in a restriction on group programming, there should be a presumption that the individual needs therapeutic support from mental health staff.

Additionally, to ensure effective alternative programming for individuals who are restricted from out-of-cell programming and treatment, OMH staff must take into account whether the individual is subject to a cell shield order, and DOCCS must accommodate those individuals. OMH should document if the individual is subject to a cell shield, and what related accommodations are made by staff to allow for effective alternative programming and treatment. The conditions and accommodations should be incorporated into the "exceptional circumstances" documentation kept by DOCCS staff.

5. Location of the RMHU

DOCCS and OMH must move RMHU housing to a new location that is equipped to support the overall program, including its incentive structure, and provide the necessary therapeutic environment. DOCCS and OMH should promptly identify alternative locations for the Attica RMHU, including relocating the program to another DOCCS facility, to ensure that the RMHU program is implemented in a manner that is fully consistent across the system as required by the SHU Exclusion Law.

E. CONCLUSION

DRNY found numerous instances of abuse and neglect in the operation of the Attica RMHU and multiple violations of the SHU Exclusion Law, specifically New York Correction Law §§ 2(21), 401(1), 401(2), and 401(6). A comprehensive framework was established by the SHU Exclusion Law to create a program that serves individuals with serious mental illness and protects against harm from isolating conditions of confinement. DRNY's findings demonstrate that there are numerous deficiencies in the day-to-day implementation of these protections. As a result, the RMHU at Attica Correctional Facility fails to provide a therapeutic alternative to solitary confinement. Additionally, there are due process concerns with the manner in which cell shield orders are implemented and renewed, resulting in unjustified orders of excessive duration.

DOCCS and OMH must jointly act to ensure a therapeutic environment for participants in the RMHU, free from harm of psychiatric deterioration. OMH must fulfill its obligations and cease deferring to DOCCS on matters where there is psychiatric risk to patients. DOCCS and OMH must immediately act to correct conditions resulting from the failure to implement appropriate regulations, standards, and policies consistent with the SHU Exclusion Law and in accordance with due process. DOCCS and OMH must act on the recommendations for corrective action, including the relocation of the Attica RMHU to ensure the program meets its objectives and improves services to incarcerated individuals with serious mental illness.

APPENDIX A

Definitions of Abuse and Neglect

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act defines "abuse" as:

> any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to a[n] individual with mental illness, and includes acts such as—
> (A) the rape or sexual assault of a[n] individual with mental illness;
> (B) the striking of a[n] individual with mental illness;
> (C) the use of excessive force when placing a[n] individual with mental illness in bodily restraints; and
> (D) the use of bodily or chemical restraints on a[n] individual with mental illness which is not in compliance with Federal and State laws and regulations.

The PAIMI Act defines "neglect" as

> a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to a[n] individual with mental illness or which placed a[n] individual with mental illness at risk of injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a[n] individual with mental illness, the failure to provide adequate nutrition, clothing, or health care to a[n] individual with mental illness, or the failure to provide a safe environment for a[n] individual with mental illness, including the failure to maintain adequate numbers of appropriately trained staff.

42 U.S.C. § 10802(1), (5).

Regulations implementing the PAIMI Act define the term "abuse" as:

> any act or failure to act by an employee of a facility rendering care or treatment which was performed, or which was failed to be performed, knowingly, recklessly, or intentionally, and which caused, or may have caused, injury or death to an individual with mental illness, and includes but is not limited to acts such as: rape or sexual assault; striking; the use of excessive force when placing an individual with mental illness in bodily restraints; the use of bodily or chemical restraints which is not in compliance with Federal and State laws and regulations; verbal, nonverbal, mental and emotional harassment; and any other practice which is likely to cause immediate physical or psychological harm or result in long-term harm if such practices continue.

"Neglect" is defined as:

> a negligent act or omission by an individual responsible for providing services in a facility rendering care or treatment which caused or may have caused injury or death to an individual with mental illness or which placed an individual with mental illness at risk of injury or death, and includes, but is not limited to, acts or omissions such as failure to: establish or carry out an appropriate individual program or treatment plan (including a discharge plan); provide adequate nutrition, clothing, or health care; and the failure to provide a safe environment which also includes failure to maintain adequate numbers of appropriately trained staff.

42 C.F.R. § 51.2.

APPENDIX B

OMH Letter Response to DRNY May 2017 Freedom of Information Law request

NEW YORK STATE OF OPPORTUNITY. | Office of Mental Health

ANDREW M. CUOMO
Governor

ANN MARIE T. SULLIVAN, M.D.
Commissioner

MARTHA SCHAEFER
Executive Deputy Commissioner

June 27, 2017

Elena Landriscina
Staff Attorney
Disability Rights New York
25 Chapel Street | Brooklyn, NY 11201
elena.landriscina@drny.org

Dear Ms. Landriscina:

Please consider this our response to your May 18, 2017 Freedom of Information Law (FOIL) request, assigned #17-081, for "information about the number of inmates admitted to the Residential Crisis Treatment Program (RCTP) during the years 2015 and 2016, from the Residential Mental Health Unit (RMHU) of Attica Correctional Facility."

Please find attached, records responsive to your request. Please note we have provided you with the number of admissions to Attica's RCTP from an RMHU, however, it may not include all Attica RMHU to RCTP transfers. If an inmate in Attica's RMHU had to be transferred to another facility for RCTP due to RCTP fill levels at Attica, OMH does not maintain that information. Additionally, if an inmate in Attica's RMHU was sent to the infirmary and transferred from there to the RCTP, OMH does not maintain that information.

Should you wish to appeal any aspect of this determination, a request for an appeal must be received within 30 days of your receipt of this letter and should be addressed to: Margaret Drake, Senior Attorney, NYS Office of Mental Health, 44 Holland Avenue, Albany, NY 12229.

I hope that you find this information useful.

Sincerely,

Riele J. Morgiewicz
Records Access Officer
Enclosures

Admissions from Attica RMHU to Residential Crisis Treatment Program (RCTP)

Month/Year	OBS Location
Jan-2015	Infirmary
Jan-2015	RCTP OBS
Jan-2015	RCTP OBS
Mar-2015	RCTP OBS
Mar-2015	RCTP OBS
Apr-2015	Infirmary
Apr-2015	Infirmary
May-2015	RCTP OBS
May-2015	RCTP OBS
May-2015	RCTP OBS
Jun-2015	Infirmary
Jul-2015	Infirmary
Jul-2015	RCTP OBS
Sep-2015	Infirmary
Nov-2015	RCTP OBS
Dec-2015	Infirmary
Total admissions	16

Month/Year	OBS Location
Jan-2016	Infirmary
Jan-2016	RCTP OBS
Jan-2016	RCTP OBS
Feb-2016	Infirmary
Feb-2016	RCTP OBS
Mar-2016	RCTP OBS
Mar-2016	Infirmary
Apr-2016	RCTP OBS
May-2016	Infirmary
May-2016	Overflow
May-2016	Overflow
May-2016	Overflow
Jun-2016	Infirmary
Jun-2016	Overflow
Jun-2016	RCTP OBS
Jul-2016	Overflow
Jul-2016	Overflow
Jul-2016	RCTP OBS
Jul-2016	Overflow
Aug-2016	Overflow
Aug-2016	Overflow
Aug-2016	Overflow
Aug-2016	Overflow
Sep-2016	Overflow
Sep-2016	Infirmary
Sep-2016	Overflow
Sep-2016	Infirmary
Sep-2016	Overflow
Oct-2016	Overflow
Oct-2016	Infirmary
Oct-2016	Infirmary
Oct-2016	Infirmary
Nov-2016	RCTP OBS
Nov-2016	Overflow
Nov-2016	RCTP OBS
Nov-2016	Infirmary
Dec-2016	RCTP OBS
Dec-2016	RCTP OBS
Dec-2016	RCTP OBS
Dec-2016	Overflow
Total admissions	40

Source: OMH Response to DRNY May 2017 Freedom of Information Law request