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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

BLAISE CHIVERS-KING, *et al.*,

Plaintiffs,

Case No. 24-CV-00039-SWS

v.

WYOMING DEPARTMENT OF FAMILY SERVICES,
WYOMING BOYS' SCHOOL, *et al.*,

Defendants.

BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I. Introduction

The Prison Litigation Reform Act bars Karn and D.H.'s claims. Defendants are entitled to qualified immunity on all § 1983 claims. Plaintiffs' ADA and Rehabilitation Act claims fail.¹

II. Statement of Material Facts Common to All Plaintiffs

1. WBS operates under the authority of the Director of DFS serving court-ordered, juvenile males adjudicated delinquent under Title 14. Wyo. Stat. Ann. §§ 9-2-2104, 25-1-201, 25-3-101.

2. Weber has been Superintendent since March 2022, after serving as Interim Superintendent from September 2021 to March 2022. Before that, he was Deputy Superintendent from June 13,

¹ A summary of Plaintiffs' claims are attached as **Exhibit 1**.

2019 to September 10, 2021, except for December 2019 to June or July of 2020 when he also acted as Interim Superintendent. **Exhibit 2**, *Dale Weber Aff.* at ¶ 4.

3. Gary Gilmore was Superintendent for nearly 20 years before September 2021, except during Weber’s interim service. When Weber was Deputy, Gilmore had final decision-making authority over use of riot gear, riot shields, and restraint chairs. When Gilmore was not present and thought staff might need the safety restraint chair to restrain Karn, he would direct Weber to authorize the chair if staff asked for it. **Ex. 2**, *Weber* ¶ 5. Gilmore also had sole authority to place a resident on administrative hold. *Id.*.

4. Del Olson² has been Deputy Superintendent since April 2023 and has worked at WBS in various positions since April 1989, including as Dorm 2 Dorm Director from August 1993 through December 2020. **Exhibit 3**, *Del Depo.* pp. 20:24-22:25, 58:8-10; *see also Ex. 19 Del* ¶ 4.

5. WBS has 4 dorms, each with a Dorm Director and dedicated staff. Residents are assigned to a dorm on intake and may be reassigned as needed. Dorm 2 closed December 2020. Each resident has their own room and generally conduct all residential activities on dorm. **Ex. 2**, *Weber* ¶ 6.

6. WBS’s Risk Management Office (“RMO”) oversees security. RMO staff are not assigned to a dorm; they address security concerns across campus, and oversee and manage movement around campus and off-site transports. **Ex. 2**, *Weber* ¶ 7; **Exhibit 4**, *RMO Policy*, DEFS 000159-160.

7. Colter Junior High and High School (CHS) provides WBS’ educational programming. **Exhibit 5**, *Eric Pomeroy Aff.* ¶ 5. Due to the COVID-19 pandemic, at times CHS had to transition school to each dorm. **Ex. 5**, *Pomeroy* ¶¶ 7-16.

8. Cloud Peak Counseling Center (CPECC), aka Oxbow Center, provides students therapeutic services through licensed providers, including medication management, counseling, and group

² To avoid confusion, this Brief will generally refer to Defendants Del Olson and Elsa Olson by their first names.

therapy. No WBS staff member can prescribe medication to students. WBS relies on licensed contracted medical providers such as Dr. Thurston and CPCC providers to do so. **Ex. 2, Weber** ¶8.

9. WBS maintains a nursing staff, who provide nursing care to WBS residents, coordinate services from medical providers, and manage medications prescribed to WBS residents. **Ex. 2, Weber** ¶ 9. Dorm and RMO staff do not have authority to schedule doctor’s appointments for students or offer any medical treatment. Any medical treatments and doctor’s appointments are scheduled by the nursing department. **Ex. 2, Weber** ¶ 9.

10. At WBS, exercise is often referred to as “physical training” or “PT.” **Ex. 2, Weber** ¶ 10.

11. The WBS campus is not fenced or enclosed. To prevent runaways, WBS has strict rules during movement across campus. Students may not speak with each other during movement. **Ex. 2, Weber** ¶11; *see also Exhibit 6, Turner Depo.* pp. 199:16-200:19 (explaining movement on and off the dorm is considered high-risk and so staff carefully regulate communications during those times).

12. On dorm, students may not freely communicate without permission due to safety concerns, including escape planning and assaults. **Ex. 2, Weber** ¶ 12.

13. WBS uses a variety of “statuses” to track residents’ progress within their programs, identify and manage potential safety risks, and otherwise facilitate decision-making among staff regarding supervision levels, room placement, and other administrative matters. **Ex. 2, Weber** ¶ 13.

14. Generally, staff attempt to employ a “least-to-most” continuum of interventions to address behavioral and safety issues. At the least intrusive level, staff rely on verbal redirection and communication, relationship-building, and other conflict resolution techniques. WBS staff often refer to such techniques as “processing” with the resident. If those fail, staff may implement increasingly restrictive measures or statuses. This framework is not rigid or invariably sequential. In practice, staff must respond to rapidly evolving situations and the totality of the circumstances

dictates the appropriate response. **Ex. 2, Weber** ¶ 14; **Exhibit 7, Special Management Policy** DEFS 000353-360 at 353.

15. Orientation is a standard intake phase for all residents upon assignment to a new dorm, during which staff assess the resident and introduce rules, expectations, and procedures. **Ex. 2, Weber** ¶ 15. When Elsa was the Dorm 4 Director, the only dorm rooms that had cameras were in B Pod. When a student first arrived on Dorm 4, the student would be assigned to a B pod room for heightened observation during orientation. A student on orientation status would be allowed to leave his dorm room as the general population did. **Exhibit 8, Elsa Olson Affidavit** ¶ 11.

16. “Time out” is a short-term status requested by a resident or staff where a resident is temporarily separated from the immediate setting or activity to de-escalate and safely allow re-engagement with programming. **Ex. 2, Weber** ¶ 16.

17. Staff may require high risk residents to wear specialized clothing (i.e. orange clothing), which is intended to make them easily identifiable for close monitoring and may be used independently or with other interventions or statuses. A resident may be high risk for numerous reasons. Residents in specialized clothing generally participate in regular activities, unless used with a more restrictive intervention or status that limits activities.³ **Ex. 2, Weber** ¶ 17. **Ex. 7** at 000354.

18. Diversionary status is like time-out, but residents also complete paperwork designed to help process emotions. **Ex. 2, Weber** ¶ 18; **Ex. 7** at 000355, **Exhibit 9, Adams Depo.** pp.121:4-122:2.

19. Out of Community Status (“OCS”) has 3 levels, with each level progressing from least to most restrictive. Peer interactions and participation in group activities are limited. Generally, OCS students conduct activities on the dorm, at school, or other areas of campus, but separate from peers and under close supervision. **Ex. 2, Weber** ¶ 19; **Exhibit 10, OCS Policy**, DEFS 000326-28.

³ During orientation, students are also required to wear specialized clothing. **Ex. 2 Weber** ¶ 17.

20. Detention Status, WBS' most restrictive status, is used when residents pose safety risks or when serious, chronic behavior disrupts others and lesser measures have failed. Residents are placed in their dorm's designated detention room or dorm rooms. Rooms used for detention status have a camera and lockable door and are kept minimally furnished to reduce safety risks and allow for close monitoring and supervision. During detention status, participation in dorm, school, and recreational activities may be limited, modified, or conducted separately, and only as the resident can safely and productively tolerate. Staff typically check students on detention status visually every 5 minutes via camera and every 15 minutes through a window or doorway.⁴ If on detention status overnight in a detention room, residents typically receive a mattress and bedding at night, which is removed in the morning. Residents on detention status are also generally provided with basic necessities, such as meals, hygiene and shower opportunities, daily medications and the like, unless the detention status is too short to require it, the resident refuses to receive such needs, or the resident's behavior is so unsafe that such needs cannot be provided safely. **Ex. 2, Weber** ¶ 20.

21. Current policy requires staff to create a Special Management Program ("SMP") when a resident's detention status exceeds 24 hours.⁵ SMPs outline the expectations and general daily schedule on detention status. Staff typically track whether the resident achieved a positive or negative day based on the expectations in the SMP on a Special Management Log ("SML"). SMLs are created by staff with personal knowledge of the resident's behavior and are reviewed by the Dorm Director and RMO. **Ex. 2, Weber Aff.**; ¶ 21; **Ex. 7** at 000356.

22. Observation status is an intervention for residents at risk of self-harm. It typically occurs in a room with a camera and frequent checks. Residents on observation status may participate in regular activities as safely tolerated and usually wear specialized clothing. **Ex. 2 Weber** ¶23; **Ex. 7** 357-8.

⁴ Staff may also perform such checks on students who are not on detention status, as needed. *Weber Aff.*, ¶ 22.

⁵ Before 12/19/2021, the period was 36 hours. **Ex. 2, Weber** ¶21; **Exhibit 12, 3/23/16 SM Policy**, DEFS 054387-92.

23. Administrative hold was a status used by Superintendent Gilmore when safety was at a heightened or unknown risk. **Ex. 2, Weber ¶ 24.**

24. A dorm may use Temporary Community Restriction (“TCR”) when behaviors pose risks to safety. TCR entails removing privileges to participate in certain activities/entertainments such as movies, television, and kickball. TCR residents are still allowed to use the Dorm common areas but are not allowed to sit with other residents. If behavior allows, TCR residents remain involved in all other programming including group therapy, school, PT and counseling. **Ex. 21 Adams ¶ 25.**

25. Per policy, it is mandatory for staff to create an incident report whenever a policy-defined unusual event occurs. Staff with personal knowledge create the reports. Incident reports identify staff involved in the incident and describe their roles and then are reviewed and signed through the chain of supervision and by RMO. **Ex. 2, Weber ¶ 25; Exhibit 11, IR Policy, DEFS 000199-203.**

26. WBS logbooks are real-time records maintained on each dorm and RMO to document daily events, resident headcounts and movements, resident checks, and unusual or significant events. Staff with personal knowledge of the recorded events create and initial logbook entries. **Ex. 2, Weber ¶ 26; Exhibit 13, Dormitory Control Center Policy, DEFS 000162-63.**

27. A Status Information Sheet that tracks the resident’s movements on and off campus, dorm placements, and specialized status information is maintained in each resident’s file. These sheets are created and updated near the time of the event recorded from information transmitted by staff with personal knowledge. **Ex. 2, Weber ¶ 27; Exhibit 14, Status Info. Policy, DEFS 000118.**

28. WBS has a video surveillance system. Some video recordings have inaccurate timestamps due to technical issues with the surveillance system. **Exhibit 15, Thad Shaffer Affidavit at ¶ 4.**

III. Statement of Facts Relevant to Prison Litigation Reform Act (“PLRA”) Defense

29. On 2/26/24, Karn initiated this lawsuit by filing his Complaint. (ECF No. 1). On that date he

was in the Wyoming Department of Corrections' ("WDOC") custody serving a life sentence at the Wyoming State Penitentiary ("WSP"). **Exhibit 16**, *Scott Abbott Affidavit* at ¶ 3.

30. On 7/30/24, Plaintiffs' counsel moved for leave to file a Second Amended Complaint to add D.H. (ECF No. 41, 42, 42-1, 42-1). The Court granted the motion that day. (ECF No. 43). D.H. joined the lawsuit on 7/31/24. (ECF No. 48).

31. On 7/30/24 and 7/31/24, D.H. resided at the Wyoming Regional Juvenile Detention Center, and had since 7/15/24, as required by court order. **Exhibit 17**, *Gus Holbrook Affidavit* at ¶¶ 3-4; **Exhibit 18**, *D.H. Depo.* pp. 168:20-169:12.

32. WBS maintains an operational grievance policy. **Exhibit 19**, *Del Olson Aff.* ¶ 6; **Exhibit 20**, *Grievance Policy* DEFS 000670-672. The grievance policy and a model grievance form are included in the WBS Resident Handbook, which is distributed to new WBS students and covered during orientation. **Ex. 19**, *Del* ¶¶ 6-8; **Exhibit 21**, *Adams* at ¶ 14; **Ex. 8**, *Elsa* ¶ 20; **Ex. 20**, DEFS 000670 at B(1). The PREA Compliance Manager also explains the grievance process individually to each new student and that he has the right to not be retaliated against. **Ex. 8**, *Elsa* ¶¶ 20-23.

33. On each dorm and in the school, WBS has a locked box students use to submit grievances or they may hand a grievance to staff. **Ex. 8**, *Elsa* ¶ 24. In 2018–2024, the box was checked twice weekly by the CPCC therapist or Elsa. The grievances were then given to the PREA Compliance Manager (for PREA complaints) or the appropriate director or supervisor, if the director was unavailable. **Ex. 8**, *Elsa* ¶ 24; **Ex. 20**, DEFS 000670 at B(2).

34. Under the WBS grievance procedure, a resident "shall first discuss his grievance with a staff." If not resolved by discussion, the resident "shall complete a grievance form and submit it to the Dormitory Director, or give it to staff to give to the Dormitory Director, or place in the comment box." Then the "Director and resident shall attempt to resolve the grievance informally." If

informally resolved, “a short written explanation shall be added to the written grievance and the Dormitory Director and resident shall sign the grievance form.” **Ex. 20** at DEFS 000670.

35. The WBS grievance policy allows a parent or guardian to submit a grievance on behalf of the resident, with or without the resident’s permission. **Ex. 20**, DEFS 000670 at (b)(3)(c).

36. The WBS grievance policy specifies that a “resident shall have the right to be free from intimidation or retaliation from WBS staff as a result of filing a grievance.” **Ex. 20** at DEFS 000671.

37. On 2/12/20, Willis filed a grievance at WBS. Pomeroy investigated the reported incident by interviewing Willis and others and reviewing video footage. Pomeroy and Willis resolved the grievance informally and Willis signed it. **Ex. 5**, *Pomeroy* ¶¶ 30-31; **Exhibit 22**, *2/12/20 Willis Grievance* DEFS 008012-8013.

38. When Karn transferred from Dorm 3 to Dorm 4 around 9/30/20, he completed Dorm 4 orientation, which included reading and reviewing the grievance policy. **Ex. 8**, *Elsa* ¶ 26.

39. While at WBS, Karn never submitted a grievance. **Exhibit 23**, *Karn Depo.* p. 187:12-14; **Ex. 19**, *Del* ¶ 9.

40. Karn’s mother or stepfather did not submit a grievance on Karn’s behalf. **Ex. 19**, *Del* ¶ 10.

41. D.H. submitted one grievance about an issue at WBS, which stated: “Mr. Sample is being disrespectfull [sic] and for some re[a]son expects me to respect him and puting [sic] me in the detention room for no good re[a]son and is disrespectfull [sic].” **Ex. 19**, *Del* ¶ 11; **Exhibit 24**, *D.H. Grievance*, DEFS 05336-37 at 5336.

42. After D.H. turned the grievance in, Stanek met with him. They discussed the events he wrote about. After discussion, D.H. told Stanek he believed no rights had been violated. On the grievance paperwork, Stanek wrote: “No rights were violated according to student. –D[H.] was being sent

to the safety room for the evening and was refusing to meet his expectations to go was upset w/ staff for sending him first.” D.H. signed the grievance on 6/2/24, to indicate it was resolved.

Exhibit 168 *Chris Stanek Affidavit* at ¶ 5; **Ex. 24**.

43. Adams, Del, and Weber reviewed and initialed the grievance. Del noted: “Student is assigned to the safety room to sleep in temporarily due to recent runaway attempt and continued failure to meet basic expectations.” **Ex. 19**, *Del* ¶ 12; **Ex. 24**, DEFS 5337.

44. D.H.’s mother did not submit a grievance on D.H.’s behalf. **Ex. 19**, *Del* ¶13.

45. D.H. testified Haun shoved him so hard he “couldn’t catch his breath. It was hard to breathe. My chest hurt for, like, about three days after.” D.H. testified he was gasping for air for about 20 minutes and struggling to breathe. **Ex. 18**, *D.H. Depo.* pp. 182:17-184:15; **Exhibit 294** 7/2/24 *Video* DEFS 005824 at about 7:24:00-7:25.

IV. Statement of Facts Concerning Plaintiff Karn

First Placement

46. Karn was adjudicated delinquent and admitted to WBS for his first placement on March 15, 2018. **Ex. 25** 3/15/18 *Memo* DEFS 002533-2534; **Ex. 23** *Karn Depo.* at 53:3-19, 54:1-6, 56:11-16.

47. Karn’s dorm classifications were as follows during his first placement: Dorm 4 from March 15, 2018 to December 14, 2018; Dorm 2 from December 14, 2018 to March 6, 2019; Dorm 4 March 6, 2019 until his discharge on October 26, 2019. **Exhibit 26**, *Status Info Sheet*, DEFS 001640-1643 at 001640-41.

48. Karn was placed on detention status on the following occasions during his first placement:

a. Sept. 17, 2018 at about 7:31 PM to Sept. 18, 2018 at about 7:27 PM on Dorm 4 after throwing personal items. **Exhibit 27**, 9/17/18 *IR*, DEFS 001213-1215, **Exhibit 26** at DEFS

001640, **Exhibit 48** 7/31/18-10/25/18 *D4 Logbook* DEFS 013197-13351 at 13271-76.

b. Nov. 21, 2018 at about 11:00AM to Nov. 23, 2018 at about 8:00 AM on Dorm 4 after breaking glasses and disclosing thoughts of hurting others. Karn worked on Truthought while in detention. **Exhibit 28**, 10/25/18-1/8/19 *D4 Logbook* DEFS 013352-13507 at 13416-13421; **Exhibit 29**, 11/21/18 *IR*, DEFS 001218-1220; **Exhibit 30**, 11/22/18 *Email*, DEFS 048120; **Ex. 26**.

c. Nov. 29, 2018 at about 9:00AM to Dec. 10, 2018 at about 1:45PM after a physical restraint. **Exhibit 31**, 11/21/18 *IR*, DEFS 001221-1223; **Exhibit 32**, 12/4/18 *IR*, DEFS 001226-1228, **Exhibit 33**, 12/1/18-12/10/18 *SML*, DEFS 002474-2476; **Ex. 28** at 013435-60; **Ex. 26**.

d. Dec. 13, 2018 to Dec. 19, 2018 after assaulting a student with a shower head. Part of this detention was an administrative hold from Dec. 14 to Dec.18. Karn spent most of this detention status on Dorm 2. The windows in student rooms are made of shatter-resistant laminated safety glass. **Exhibit 34**, *John Schwalbe Affidavit* at ¶ 5. Schwalbe testified he did not shove Karn's face into broken glass on this occasion. **Exhibit 35**, *Schwalbe Depo.* pp. 231:21-23, 233:1-3; **Exhibit 36**, 12/13/18 *IR* DEFS 001229-1231, **Ex. 26**, **Ex. 28**, at DEFS 013463-13466; **Exhibit 207** 11/7/18-2/10/19 *D2 Logbook* DEFS 010057-213 at 010112-10127.

e. Mar. 11, 2019 at about 7:05 PM to Mar. 12, 2019 at about 8:00 PM on Dorm 4 after refusing to follow directions and distracting other students. **Exhibit 37**, 3/11/19 *IR* DEFS 001238-1240; **Ex. 26**; **Exhibit 38**, 1/8/19-3/25/19 *D4 Logbook* DEFS 013508-13663 at 13638-13643.

f. Apr. 7, 2019 at about 7:12 PM to Apr. 8, 2019 at about 8:20 PM after a physical restraint. **Exhibit 39**, 4/7/19 *IR* DEFS 001241-1244; **Exhibit 40**, 3/25/19-6/26/19 *D4 Logbook*, DEFS 013664-013819 at 13681-85; **Ex. 26**.

g. May 21, 2019 at about 6:36 PM to May 25, 2019 at about 7:30 PM after having behavior issues. Karn received groupwork and schoolwork on detention status. **Exhibit 41**, 5/21/19 *IR*,

DEFS 001248-1250; **Exhibit 42** 5/23/19 SMP, DEFS 002477-2478; **Ex. 40** at 013762-72; **Ex. 26**.

h. Jun. 26, 2019 at about 5:15 PM through Jun. 29, 2019 at about 4:19 PM after a physical restraint. Karn received schoolwork on detention status. **Ex. 26**, **Exhibit 43**, 6/26/19 IR, DEFS 001253-1255; **Exhibit 44**, 9/1/19 IR, DEFS 002479; **Ex. 40**, at DEFS 013817-18; **Exhibit 46**, 6/26/19-9/23/19 D4 Logbook, DEFS 013820-13976 at 13822-29.

i. Sept. 1, 2019 at about 3:13 PM to Sept. 2, 2019 at about 7:50 PM after damaging property. **Exhibit 45**, 9/1/19 IR, DEFS 001262-1263; **Ex. 46**, at DEFS 013933-37; **Ex. 26**.

49. Karn was restrained on the following occasions during his first placement:

a. On July 20, 2018, Karn was restrained after hitting things in his room, wrapping a sheet around his neck, and swinging a sheet at staff. **Exhibit 47**, 7/20/18 IR, DEFS 001208-1210.

b. On November 29, 2018, Karn was restrained after throwing a desk at staff and attempting to run out of class. **Exhibit 49**, 11/29/18 IR, DEFS 001221-1223.

c. On December 13, 2018, Karn was restrained after assaulting another student with a shower head and shattering a window. **Exhibit 50**, 12/13/18 IR, DEFS 001229-1231. Schwalbe testified he did not shove Karn's face into broken glass on this occasion. **Ex. 35** at pp. 231:21-23, 233:1-3.

d. On April 7, 2019, Karn was restrained after hitting things with his sweater and attempting to hit a staff member. A staff member reported an injured knee afterwards. **Exhibit 39** at DEFS 001241; **Exhibit 51**, 4/7/19 IR, DEFS 002210-2212.

e. On May 7, 2019, Karn was restrained after refusing to allow staff to redirect him to the school time out room. Karn was transported back to Dorm 4 using the restraint chair and removed from the chair shortly after arriving on dorm. **Exhibit 52**, 5/7/19 IR, DEFS 001245-1247.

f. On June 26, 2019, Karn was restrained after swinging his arm at a staff member when the staff member tried to process with him about hitting a window. **Exhibit 53**, 6/26/19 IR, DEFS

001253-1255.

Second Placement

50. Karn returned to WBS on May 7, 2020 pursuant to court order. On April 3, 2020, the court ordered Karn to return to WBS indefinitely. **Exhibit 54**, *4/6/2020 Order*, DEFS 000792-93; **Exhibit 55**, *5/18/20 Memo*, DEFS 002602-2603. In March 2021, the court ordered him to remain at WBS until he reached age 21.⁶ **Exhibit 57**, *3/31/21 Order*, DEFS 000799-803.

51. Karn was classified to the following dorms during his second placement: Dorm 1 from May 7, 2020 to May 20, 2020; Dorm 3 from May 20, 2020 to September 30, 2020; Dorm 4 from September 30, 2020⁷ to May 24, 2021; Dorm 3 from May 24, 2021 until his discharge on September 10, 2021. **Ex. 26** at DEFS 001641-1643.

52. Karn was placed on detention status on the following occasions during his second placement:

a. Jun. 17, 2020 at about 7:05 PM to Jun. 19, 2020 at about 7:45 PM on Dorm 3 after a physical restraint. **Exhibit 59**, *6/17/20 IR* DEFS 001269-1271; **Exhibit 60**, *6/1/20-9/2/20 D3 Logbook* DEFS 011314-11470 at 011341-11347; **Ex. 26**, at DEFS 001641.

b. Jul. 13, 2020 at about 3:30 PM to Jul. 14, 2020 at about 7:25 PM on Dorm 3 after a physical restraint. **Exhibit 61**, *7/13/20 IR*, DEFS 001279-1280; **Ex.60** at 011378-11385; **Ex. 26**.

c. The evening of Aug. 16, 2020 to Aug. 18, 2020 at about 8:00 PM on Dorm 3 after a physical restraint. **Exhibit 62**, *8/16/20 IR*, DEFS 001285-1288; **Ex. 60** at DEFS 011435-11441.

d. Sept. 29, 2020 to October 15, 2020 after assaulting a student. Karn was transferred to Dorm 4 during detention. **Exhibit 63**, *9/29/20 IR* DEFS 001293-1295; **Exhibit 64**, *9/3/20-12/28/20 D3 Logbook* DEFS 011471-011626 at 011501-11505; **Exhibit 65**, *9/9/20-12/10/20 D4 Logbook*

⁶ After the court ordered Karn remain at WBS until age 21, his probation officer warned Elsa that Karn had told her “that if he killed someone he would be out of WBS.” **Exhibit 56**, *2/25/21 Email re Karn*, DEFS 049059.

⁷The Status Information Sheet reflecting this change in classification contains a typo, but other documentation shows Karn was reclassified to Dorm 4. **Exhibit 58**, *9/30/20 IR*, DEFS 001296-97.

DEFS 014603-14758 at 014636-14670; **Ex. 26** at DEFS 001641; **Ex. 21**, *Adams* ¶ 8.

e. Dec. 1, 2020 at about 11:41 AM to Dec. 3, 2020 at about 8:10 AM on Dorm 4 after refusing to commit to being safe. **Exhibit 66**, *12/1/20 IR* DEFS 001302-1304; **Ex. 65** at DEFS 014739-44; **Ex. 26** at DEFS 001641.

f. Dec. 22, 2020 at about 1:27 PM to Dec. 24, 2020 at about 4:00 PM on Dorm 4 after pretending to shoot people. **Exhibit 67**, *12/22/20 IR* DEFS 001305-1309; **Exhibit 68**, *12/10/20-2/18/21 D4 Logbook* DEFS 014759-14913 at DEFS 014785-14789; **Ex. 26** at DEFS 001641.

g. Feb. 2, 2021 at about 1:09 PM to Feb. 18, 2021 at about 3:15 PM on Dorm 4 after instigating another student to fight staff and other noncompliance. Karn was temporarily moved to Dorm 2 from Feb. 4 to Feb. 16 for detention due his behaviors disrupting Dorm 4 and interfering with other students' abilities to work their programs. **Exhibit 69**, *2/2/21 IR*, DEFS 001310-1312; **Ex. 68** at DEFS 014872-014881, 14907-14913; **Exhibit 70**, *2/4/21-7/4/21 D2 Logbook* DEFS 010842-998 at 10844-869; **Exhibit 71**, *2/18/21-4/18/21 D4 Logbook* DEFS 014914-15069 at 14916-14917; **Exhibit 72**, *2/8/2021 CPCC Note*, CPCC000624; **Ex. 8**, *Elsa* ¶ 26.

h. Mar. 27, 2021 at about 7:00 PM to Mar. 28, 2021 at about 6:30 PM on Dorm 4 after destroying property and threatening staff. **Exhibit 73**, *3/27/21 IR* DEFS 001336-1338; **Ex. 71** at DEFS 015005-09; **Ex. 26** at DEFS 001642.

i. Apr. 4, 2021 at about 5:16 PM to Apr. 17, 2021 at about 9:00 AM on Dorm 4 after making terroristic bomb threats on Facebook. During his days of positive behavior, Karn did physical training and read books. **Exhibit 74**, *4/4/21 IR*, DEFS 001339-40; **Ex. 71** at DEFS 015021-15065; **Exhibit 75**, *4/6/21 IR*, DEFS 001344-46; **Exhibit 76**, *4/4/21-4/17/21 SML* DEFS 002500-02; **Ex. 26** at DEFS 001642.

j. June 7, 2021 to June 9, 2021 on Dorm 3 after a physical restraint. **Exhibit 77**, *6/7/21 IR*

DEFS 001358-1360; **Exhibit 78**, 3/19/21-6/19/21 *D3 Logbook* DEFS 011784-11940 at 011906-011912; **Exhibit 79**, 6/9/21 *CPCC Note*, CPCC000656; **Ex. 26** at DEFS 001642.

k. June 12, 2021 to July 9, 2021, on Dorm 3 after noncompliance and threats. Karn was temporarily moved to Dorm 2 from June 15 to the morning of June 18, and from the evening of June 18 to July 6 due to disruptive behavior that interfered with other students' abilities to work their programs. Karn was also temporarily placed in the school timeout room from the evening of Jun. 20 to the afternoon of Jun. 22 after damaging the fire sprinkler in the Dorm 2 detention room. **Exhibit 80**, 6/12/21 *IR* DEFS 001361-63; **Exhibit 81**, 6/13/21 *IR* DEFS 001364-67; **Exhibit 82**, 6/18/21 *IR* DEFS 001372-73; **Exhibit 83**, 6/20/21 *IR* DEFS 001378-82; **Exhibit 84**, 6/21/21 *IR* DEFS 001383-86; **Exhibit 85**, 6/24/21 *IR* DEFS 001399-1402; **Exhibit 86**, 6/26/21 *IR* DEFS 001415-22; **Exhibit 87**, 6/27/21 *IR* DEFS 001423-32; **Exhibit 88**, 6/29/21 *IR* DEFS 001433-42; **Ex. 78** at DEFS 011915-11927; **Ex. 70** at DEFS 010933-10997; **Exhibit 89**, 7/4/21-12/9/21 *D2 Logbook* DEFS 010999-11157 at 011001-08; **Exhibit 90**, 7/2/21 *Email* DEFS 048334, **Exhibit 91**, 7/4/21 *Email* DEFS 047750, **Exhibit 92**, *CPCC Docs* CPCC000656, 659, 662-63; **Exhibit 93**, 6/12/21-7/9/21 *SML* DEFS 002508-2519, **Ex. 21**, *Adams at ¶* 10; **Ex. 26** at 001642.

l. Aug. 21, 2021 to Aug. 26, 2021 at about 1:28 PM after attempting to abscond from WBS. Karn started detention on Dorm 2 and finished it on Dorm 3. **Exhibit 94**, 8/21/21 *IR* DEFS 001468-1475; **Exhibit 95**, 8/24/21 *IR* DEFS 001476-78; **Exhibit 96**, 8/21/21-8/26/21 *SML* DEFS 002520-22; **Exhibit 97**, 6/19/21-8/29/21 *D3 Logbook* DEFS 011941-12096 at 012070-12085; **Ex. 89** at 11009-11015; **Ex. 26** at 001642.

m. Aug. 29, 2021 to Sept. 9, 2021 at about 8:47 AM after threatening staff, Karn was moved from Dorm 3 to Dorm 2 for detention status. **Exhibit 98**, 8/29/21 *IR* DEFS 001485-1487; **Ex. 89** at 011015-11057; **Exhibit 99**, 8/29/21-11/14/21 *D3 Logbook* DEFS 012097-12253 at 012100,

12117.

53. Karn was restrained on the following occasions during his second placement:

a. On June 17, 2020, Karn was restrained after destroying property and hitting a staff member “in the head with a closed right fist.” **Ex. 59; Ex. 60** at 011341; **Exhibit 380** 6/17/20 Video DEFS 002173 (timestamp 6:19:12 through 6:29:14).

b. On July 13, 2020, Karn was restrained so that staff could move him from the school time out room to the detention room on Dorm 3. **Ex. 61.**

c. On August 16, 2020, Karn was restrained after attempting to flip or throw a desk and running away from staff. Karn was removed from the restraints after making a commitment to be safe. **Ex. 62; Exhibit 381** 8/16/20 Video DEFS 002705 (timestamp 7:59:29 through 8:05:33).

d. On September 29, 2020, Karn was handcuffed after he struck a peer “in the back of the head two-three times with a closed right fist.” Karn was then taken to the Dorm 3 detention room, where he was released from restraints after making “a commitment to be safe.” **Ex. 63; Exhibit 382** 9/29/20 Video DEFS 002706 (timestamp 11:47:13 through 11:47:53).

e. On September 30, 2020, Karn was restrained after hitting the walls and door, which created a safety risk to himself. **Ex. 58; Ex. 65** at 014637; **Exhibit 35**, *Schwalbe Depo.* at 178:1-2, 178:12.

f. On December 22, 2020, Karn was restrained and placed in the restraint chair after spinning around to face staff when they entered to clean the detention room camera. **Ex. 67.**

g. On February 2, 2021, Karn was handcuffed “for his safety and due to his past assaultive behaviors” when staff entered the room to check a security camera that lost focus when Karn hit it. **Ex. 69; Ex. 68** at 014872.

h. On February 3, 2021, Karn was restrained after hitting the camera and pulling putty out of the window sill. **Exhibit 100**, 2/3/21 IR DEFS 001313-1315; **Ex. 68** at 014879.

i. On February 4, 2021, Karn was handcuffed “for his safety” and placed in the restraint chair after swiping at the detention room camera. Karn was given opportunities to exercise his limbs, eat lunch, and use the restroom during the approximately two hours he spent in the chair. **Exhibit 101**, 2/4/21 IR DEFS 001316-1322; **Ex. 68** at 014881.

j. On February 5, 2021, Karn was restrained after hitting the detention room cameras and not making a commitment to stop. The restraints were removed after Karn made a commitment to be safe. **Exhibit 102**, 2/5/21 IR DEFS 001323-1325; **Ex. 70** at 010845-46; **Exhibit 383** 2/5/21 Video DEFS 002710 (timestamp 10:40:00 through 10:47:00).

k. On February 7, 2021, Karn was restrained after wrapping socks around his neck and refusing to follow staff instructions when they entered the room. **Exhibit 103**, 2/7/21 IR DEFS 001326-1328; **Ex. 70** at 010848; **Exhibit 384** 2/7/21 Video DEFS 002711 (timestamp 9:40:31 through 9:46:24).

l. On February 8, 2021, Karn was restrained after hitting the camera, causing it to lose focus, and threatening to assault certain staff. Karn was placed in the restraint chair after refusing to calm down. While in the restraint chair, Dorm 4 therapist Megan Galovich came to process with Karn. Karn spent about 2 hours and eighteen minutes in the chair before making a commitment to be safe. **Exhibit 104**, 2/8/21 IR DEFS 001329-1335; **Ex. 70** at 010852; **Ex. 72**; **Exhibit 385** 2/8/21 Video DEFS 002712 (timestamp 12:50:21 to 12:52:10).

m. On April 6, 2021, Karn was restrained after tearing apart his pillow and attempting to hit staff when they entered the room to retrieve the pieces. **Ex. 75**; **Exhibit 386** 4/6/21 Video DEFS 002713 (timestamp 6:09:43 to 6:15:30).

n. On April. 7, 2021, Karn was restrained after ripping his shorts, tying them around his face, and saying he would fight staff if they took the ripped clothing. **Exhibit 105**, 4/7/21 IR DEFS

001347-1349; **Ex. 71** at 015034; **Exhibit 387** 4/7/21 *Video* DEFS 002714 (timestamp 12:10:41 through 12:16:10).

o. On April 9, 2021, Karn was restrained after refusing to leave the bathroom when directed by dorm staff. **Exhibit 106**, 4/9/21 *IR* DEFS 001350-1351; **Exhibit 388a** 4/9/21 *Video* DEFS 002715 (timestamp 9:58:03 to 10:08:13); **Exhibit 388b** 4/9/21 DEFS 02715 (timestamp 9:59:37 to 10:11:10).

p. On June 7, 2021, Karn was restrained after breaking his glasses, using the glass to scratch a window and camera, threatening to hurt people, and stating he would use the glass for a plan. Karn was removed from restraints after making three commitments to be safe. **Ex. 77; Exhibit 389** 6/7/21 *Video* DEFS 002716 (timestamp 6:48:58 to 6:51:00)

q. On June 12, 2021, Karn was restrained after tearing up the detention room pillow and hitting cameras. The restraints were removed after Karn processed with staff and made a commitment to be safe. **Ex. 80; Exhibit 390** 6/12/21 *Video* DEFS 002717 (timestamp 2:25:54 through 2:27:45).

r. On June 13, 2021, Karn was restrained after smearing feces all over the detention room multiple times, which required staff to pressure wash the room. **Ex. 81; Exhibit 391** 6/13/21 *Video* DEFS 002718 (timestamp 11:20:03 through 11:24:25).

s. On June 13, 2021, Karn was restrained a second time after tearing the elastic waistband from his shorts, wrapping it around his arms, head, neck, and hand, and refusing to give up the ripped clothing to staff. **Ex. 81.**

t. On June 14, 2021, Karn was restrained after approaching staff when they entered the room to retrieve a ripped-up towel. During the restraint, Karn hit a staff member in the eye three times. **Exhibit 107**, 6/14/21 *IR* DEFS 001368-71; **Exhibit 108**, 6/14/21 *IR* DEFS 002213-14; **Ex. 78** at

011924; **Exhibit 392** 6/14/21 *Video* DEFS 002719 (timestamp 5:58:29 through 6:00).

u. On June 19, 2021, Karn was restrained and later placed in the restraint chair after feigning an attack on a staff member and kicking, grabbing, and hitting that staff member several minutes later. Karn spent just over two hours in the restraint chair, and spent another eighteen minutes in soft restraints after being removed from the chair. **Exhibit 109**, 6/19/21 *IR* DEFS 001374-1377; **Exhibit 110**, 6/19/21 *IR* DEFS 002218-2219; **Exhibit 393** 6/19/21 *Video* DEFS 002720 (timestamp 2:36:00 through 2:39:00).

v. On June 20, 2021, Karn was restrained and placed in the restraint chair after attempting to break the fire sprinkler and threatening to hurt staff. After the restraint, Mark Nelson reported his shoulder hurt. **Ex. 83**; **Exhibit 111**, 6/20/21 *IR* DEFS 002222-2223; **Exhibit 394** 6/20/21 *Video* DEFS 002721 (timestamp 10:46:55 through 10:47:55).

w. On June 21, 2021, Karn was restrained and placed in the restraint chair after he attempted to damage the school time out room. Karn was released after about an hour. **Ex. 84**; **Ex. 70** at 010950.

x. On June 22, 2021, Karn was restrained and placed in the chair after damaging the ceiling of the school time out room. When Shaffer offered to transition Karn to soft restraints, Karn “responded with threats and refused to comply.” After Karn was transported back to Dorm 2 in the chair, he was removed from it and placed in soft restraints for another sixteen minutes. **Exhibit 112**, 6/22/21 *IR* DEFS 001387-1391, **Ex. 70** at 010954.

y. On June 22, 2021, Karn was restrained a second time after using a piece of metal to self-harm and damage the camera. **Exhibit 113**, 6/22/21 *IR* DEFS 001392-1395; **Exhibit 395** 6/22/21 *Video* DEFS 002724 (timestamp 3:21:15 through 3:33:09).

z. On June 23, 2021, Karn was restrained after refusing to follow directions and feigned

attacks at Shaffer. Shaffer injured his right knee during the restraint. **Exhibit 114**, 6/23/21 IR DEFS 001396-1398; **Exhibit 115**, 6/23/21 IR DEFS 002224-2225; **Ex. 70** at 010958; **Exhibit 396** 6/23/21 Video DEFS 002725 (timestamp 5:01:45 through 5:07:25).

aa. On June 24, 2021, Karn was restrained after punching the riot shield multiple times when staff entered to retrieve a shirt Karn had misused. **Ex. 85**; **Ex. 70** at 010961; **Exhibit 397** 6/24/21 Video DEFS 002726 (timestamp 3:21:51 through 3:28:33).

bb. On June 25, 2021, Karn was restrained in the chair after giving a commitment to self-harm, tearing the elastic waistband from his underwear, tying it around his neck, and hitting a staff member when staff tried to take it away. Karn was restrained in the chair for about seven and a half hours before he “made good commitments to be safe and follow his expectations.” **Exhibit 116**, 6/25/21 IR DEFS 001403-14; **Ex. 70** at 010964; **Exhibit 398** 6/25/21 Video DEFS 002727 (timestamp 11:12:34 through 11:21:24).

cc. On June 26, 2021, Karn was restrained in the restraint chair after smearing feces on the detention room walls and cameras. Karn spent about seven hours and fifty minutes in the chair, during which time he smiled and laughed, but also refused to comply with staff directions. **Ex. 82**; **Ex. 70** at 010967, **Exhibit 399a** 6/26/21 Video DEFS 002728 (timestamp 11:33:29 through 11:39:40); **Exhibit 399b** 6/26/21 Video DEFS 002728 (timestamp 1:28:08 through 1:28:54); **Exhibit 399c** 6/26/21 Video (timestamp 2:39:21 through 2:39:27); **Exhibit 399d** 6/26/21 Video DEFS 002728 (timestamp 3:11:46 to 3:19:35).

dd. On June 27, 2021, Karn was restrained in the restraint chair after attempting to damage the detention room multiple times. After the restraint, a staff member reported stiffness in his neck. Karn remained in the chair for about four hours and ten minutes before making a commitment to be safe. **Ex. 87** DEFS 001423-1432; **Exhibit 117**, 6/27/21 IR DEFS 002226-28; **Ex. 70** at 010970;

Exhibit 400 6/27/21 *Video* DEFS 002729 (timestamp 2:53:49 through 2:58:46).

ee. On June 29, 2021, Karn was restrained in the restraint chair after damaging the window frame on the detention room door. After the restraint, a staff member reported feeling his shoulder move and pop. Karn spent about two hours and forty minutes in the chair, during which he received dinner and opportunities to stretch his limbs. **Ex. 88**, DEFS 002232, **Ex. 70** at 010977-78, **Exhibit 401** 6/29/21 *Video* DEFS 002730 (timestamp 4:36:06 through 4:39:35).

ff. On June 30, 2021, Karn was restrained in the chair after breaking the window frame in the door again. Karn spent about two hours and twenty-five minutes in the chair, during which maintenance arrived to repair the window frame. **Exhibit 118**, 6/30/21 *IR* DEFS 001443-52; **Ex. 70** at 010980-82.

gg. On August 21, 2021, Karn was restrained after attempting to abscond from WBS and breaking windows at the school. Karn was taken to Dorm 2 and removed from restraints after demonstrating he was calm. **Ex. 94**; **Ex. 97** at 012070.

hh. On August 30, 2021, Karn was restrained after attempting to damage the detention room window with his shirt. Karn was removed from restraints after he “agreed to meet expectations.” **Exhibit 119**, 8/30/21 *IR* DEFS 001488-1490; **Ex. 89** at 011018.

ii. On August 30, 2021, Karn was restrained a second time after tearing his shirt, tying into a rope, attempting to hang himself, and not following staff directions. Karn was removed from restraints gradually as he demonstrated he would act in a safe manner. **Exhibit 120**, 8/30/21 *IR* DEFS 001494-1497; **Ex. 89** at 011019; **Exhibit 402** 8/30/21 *Video* DEFS 002731 (timestamp 10:55:32 through 11:01:27 and 12:20:12 through 12:38:05).

jj. On September 10, 2019, Karn was restrained and placed in the restraint chair after attempting to abscond from Dorm 3 by hitting exterior windows and assaulting two staff members

with the metal piece of a three-ring binder. One of the staff members suffered lacerations to his head from the assault. [REDACTED]

[REDACTED] **Exhibit 121**, 9/10/21 IR DEFS 001504-1507, **Ex. 99** at 012119; **Ex. 89** at 011058-59; **Exhibit 403** 9/10/19 Video DEFS 002732 (timestamp 7:36:40 through 7:57:49), [REDACTED], **Ex. 23** *Karn Depo.* at 70:14-23, **Exhibit 123**, 3/28/22 *Discharge Summ.* DEFS 002646.

Second Placement: Right Arm Injury and Alleged Attempted Suicide

54. Karn reported his right wrist hurt during the second restraint on June 22, 2021. Nurse Dahlke checked his right wrist during the restraint. On June 28, 2021, Dahlke contacted Dale Weber about making a doctor's appointment. On July 1, 2021 at about 6:33 AM, Dr. Thurston examined Karn's wrist, assessed it as a soft tissue strain, and ordered conservative management and Tylenol. **Ex. 113; Exhibit 404** 6/28/21 Email DEFS 047816; **Exhibit 124** 7/1/21 *Physician Encounter* DEFS 002277, **Exhibit 70** at 010983.

55. Karn attempted to tie a piece of clothing to the ceiling and put his head through it on June 13, July 19, and August 30 of 2021, but did not lose consciousness during any of these incidents. McGinty was only involved in the June 13 incident **Ex. 23** *Karn Depo.* at 97:3-25, 98:1-12; **Ex. 81; Ex. 120; Exhibit 125** *Kevin McGinty Affidavit* at ¶ 7; **Exhibit 126** *McGinty Time Detail* DEFS 054099; **Exhibit 405** 6/13/21 Video DEFS 002718 (timestamp 10:56:20 through 11:08:09).

56. [REDACTED]

[REDACTED] **Exhibit 127** *Affidavit of Mary Johnson (CPCC)* ¶ 8.

57. CHS provided educational services to Karn, though he often refused to participate or put forth

effort. **Ex. 5 Pomeroy** at ¶ 28; **Ex. 8 Elsa** at ¶ 32.

58. Karn did not request any accommodations for any mental health diagnoses or physical conditions, nor was it obvious he needed any. **Ex. 2, Weber** ¶ 28; **Ex. 19, Del Aff.** ¶ 14, **Ex. 21, Adams Aff.** ¶ 11; **Ex. 8, Elsa Aff.** ¶ 7, **Exhibit 133 Turner Affidavit** at ¶ 7.

V. Statement of Facts Concerning Plaintiff Chivers-King

First Placement

59. In March 2020 the juvenile court adjudicated Chivers-King delinquent and ordered him into DFS custody for placement at WBS. **Exhibit 128 1/23/20 PDR** WDFS 002070-80; **Exhibit 129 2/18/20 Order** DEFS 002891-2894; **Exhibit 130 3/18/20 Order** DEFS 002895-96.

60. He arrived at WBS on 4/1/20. **Exhibit 131 4/8/20 Memo** DEFS 004068-69. Following a 14-day COVID quarantine, he arrived on Dorm 1 on 4/15/20. **Exhibit 132 Status Info.** DEFS 003570.

Turner was the Dorm 1 Director. **Ex. 133 Turner** ¶ 4.

61. During his first placement, he was on detention status 8 times and administrative hold once:

Status	Start	End	Duration	Reason
Detention	4/16/20 10:10	4/17/20 13:00	1 day, 1 hr, 50 min	Property destruction/self-harm
Detention	4/17/20 14:35	4/24/20 19:00	7 days, 4 hrs, 25 min	Threatened staff/property destruction/self-harm
Detention	4/27/20 16:12	4/29/20 19:45	1 day, 15 hrs, 33min	Staff assault
Detention	5/12/20 17:30	5/19/20 19:00	7 days, 1 hr, 30 min	Disrupting peers/property destruction
Detention	5/30/20 15:20	6/1/20 06:57	1 day, 15 hrs, 37 min	Staff assault/property destruction
Administrative	7/13/20 15:44	7/27/20 19:30	14 days, 3hrs, 46min	Staff assault
Detention	11/3/20 18:35	1/11/20- 08:50	7 days, 14 hrs, 15 min	Staff assault

Detention	2/22/21 14:08	2/24/21 20:00	2 days, 5 hrs, 52 min	Property destruction/staff assault.
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Ex. 132.⁸

62. The 4/16/20 detention resulted from him attempting to destroy his room's camera and window after he was placed on diversionary. Staff restrained him when the behaviors continued and he attempted to leave the detention room. No Defendants were involved. **Exhibit 136** 2/6/20-4/16/20 *DI Logbook* DEFS 009121-9276 at 009275; **Exhibit 137** 1/16/20 *IR* DEFS 003313-15; **Exhibit 138** 4/16/20-5/21/20 *DI Logbook* DEFS 009277-9433 at DEFS 009279.

63. Little more than 1 hour after being removed from detention status 4/17/20, he threatened staff, was returned to the detention room to calm down, and instead punched the door, light, and camera, threatened staff, yelled, and tore clothing. He was placed in soft restraints and returned to detention status. **Exhibit 139** 4/17/20 *IR* DEFS 003316-3318; **Ex. 138** at DEFS 009285.

64. His destructive behaviors continued the next several days and included two instances of attempted self-harm on 4/19/20. During the second incident of self-harm, Mike Nelson placed him in handcuffs for about 30 minutes. Nursing examined and treated him on both occasions. He continued destructive behaviors the next 4 days but did not self-harm and was removed from detention status 4/24/20. **Ex. 138** at DEFS 009288-93, **Exhibit 140** 4/19/20 *IR* DEFS 003319-20; **Exhibit 141** 4/19/20 *IR* DEFS 003321-23; **Exhibit 142** 4/17/20-4/24/20 *SML* DEFS 004032-33.

65. The 4/27/20 detention status resulted from Chivers-King attacking staff who tried to restrain him when he threatened them and punched a mirror. Mike Nelson, Mark Nelson, and Shaffer assisted in restraining him, with Mark Nelson helping to apply upper body mechanical restraints

⁸ Though not on detention status, Chivers-King was placed in the detention room on 10/4/20 at 5:00pm until 10/6/20 at 7:00pm after attempting self-harm. Staff, including Shaffer, deescalated him and he was checked every 15 minutes. **Ex. 132**; **Exhibit 134** 10/4/20 *IR* DEFS 003342-44; **Exhibit 135** 7/30/20-12/2/20 *D2 Logbook* at DEFS 010759-60.

and Shaffer soft restraints to his ankles. The restraints were removed in stages, and nursing monitored and examined him. **Exhibit 143** 4/27/20 IR DEFS 003324-26; **Exhibit 144** 4/27/20 *Video*, DEFS 004055.

66. On 5/12/20 staff placed Chivers-King on detention status for repeatedly failing to follow instructions and for disrupting other students. The next 4 days, he disrupted students, beat on the window/door, yelled at staff, and tore his clothing. He was removed from detention status on 5/19/20. During this approximately 7-day detention status, he processed with staff repeatedly, saw counselor Fritzler, had a call outside the detention room, and was provided with basic needs such as bedding, hygiene, meals, and showers. **Exhibit 145** 5/12/20 IR DEFS 003327-3329; **Exhibit 146** 5/12/20-5/19/20 SML DEFS 004036-37; **Ex. 138** at DEFS 009396-9428; **Exhibit 147** 5/14/20 *CPCC Progress Note* CPCC001608.

67. Chivers-King was placed on detention status on 5/30/20, for threatening and cursing at staff and throwing a chair. He continued to escalate, kicking his door and punching his window and lights. Staff, including Mike Nelson, restrained him as he resisted. Nursing examined him during this time. **Exhibit 148** 5/30/20 IR DEFS 003330-32; **Exhibit 149** 5/30/20 *Video* DEFS 004056; **Exhibit 150** *Med Request* DEFS 003658.

68. After throwing a chair at staff on 7/13/20, and resisting staff that tried to restrain him, including Shaffer, Superintendent Gilmore ordered Chivers-King onto administrative hold. He was placed in restraints and monitored and examined by nursing. While on administrative hold, his violent behavior continued, and staff, including Shaffer restrained him again when he obstructed cameras. Nursing examined and monitored him while restrained. **Exhibit 151** 7/13/20 IR DEFS 003336-38; **Exhibit 152** 7/13/20 *Video* DEFS 004057; **Ex. 2**, *Weber Aff.*, ¶¶ 24, 29-30; **Ex. 133** *Turner Aff.*, ¶¶5-6; **Exhibit 153** 7/14/20 IR DEFS 003339-3341; **Exhibit 154** 7/14/20 *Video* DEFS 004058.

69. He was reclassified to Dorm 2 on 7/20/20, and remained on administrative hold until 7/27/20. **Ex. 132; Exhibit 155 4/3/20-7/30/20 D2 Logbook** DEFS 010527-10683 at 010677.

70. On or around 11/3/20, Del learned [REDACTED]. Anticipating this would upset him, and in light of past behaviors, Del ensured there was sufficient staff present when informing him. He reacted aggressively, and staff, including Shaffer and Mark Nelson, restrained him. He resisted. Del was present but did not participate. Nursing examined him after. **Ex. 3** at pp. 165:21-166:15; **Exhibit 156 11/3/20 IR** DEFS 003345-47; **Exhibit 157 11/3/20 Video** DEFS 004059.

71. Superintendent Gilmore placed him on administrative hold/detention status for 7 or 8 days and Del informed him of that decision. **Ex. 3**, at pp. 177:3-182:23. He remained on detention status until 11/11/20. **Ex. 132.**

72. On 12/2/20, Chivers-King transferred from Dorm 2 to Dorm 3 due to Dorm 2 closing. Adams was the Dorm 3 Director at the time. **Ex. 132; Ex. 9** at pp. 12:15-13:13; **Ex. 21 Adams ¶4.**⁹

73. At school on 2/22/21, Chivers-King, was placed on detention status after striking walls and throwing his shoes at the ceiling in the time-out room where he had requested to go. While in the detention room, his destructive behavior continued and he threatened self-harm. Nursing attempted to examine him after this incident but he refused. His behavior escalated the following day and he was restrained after staff, including Shaffer, entered the room using a riot shield, the use of which Gilmore had approved. He was placed in restraints and nursing examined and treated him. He was removed from detention status on 2/24/21. **Exhibit 162 2/22/21 IR** DEFS 003363-65; **Exhibit 163 2/22/21 Med. Request** DEFS 003672; **Exhibit 164 2/23/21 IR** DEFS 003366-68; **Exhibit 165**

⁹ Between 12/2/20, and 2/22/21, Staff successfully deescalated Chivers-King on numerous occasions without physical restraint or anything more than diversionary status. **Exhibit 158 12/12/20 IR** DEFS 003350-51; **Exhibit 159 12/22/20 IR** DEFS 003352-003353; **Exhibit 160 2/18/21 IR** DEFS 003358-59; **Exhibit 161 2/21/21 IR** DEFS 003360-62.

2/23/21 Video DEFS 004060; **Ex. 132.**, **Exhibit 166** 2/22/21-2/24/21 SML DEFS 004041-42; **Exhibit 167** 12/28/20-3/19/22 D3 Logbook DEFS 011627-11783 at 011731-11741.

74. Chivers-King discharged from WBS on March 5, 2021. **Ex. 132.**

Second Placement

75. In April 2021, the Juvenile Court again adjudicated Chivers-King delinquent and ordered him to WBS for an indefinite period. **Exhibit 169** 5/18/21 Order DEFS 002969-2977.

76. On 5/25/21, Chivers-King returned to WBS and was classified to Dorm 4 on COVID 19 quarantine. **Exhibit 170** 5/25/21 Memo DEFS 04094-4095; **Exhibit 172** 2nd Status Info Sheet DEFS 003612-3613; **Ex. 9**, at p. 17:4-6; Tate Adams was interim director of Dorm 4 at this time. **Ex. 21 Adams** ¶ 4. In late July 2021, Mike Nelson transitioned to Dorm 4 director and remained in that role until late April 2022. **Exhibit 171** Affidavit of Mike Nelson, ¶ 7.

77. He completed Dorm 4 orientation June 2, 2021. **Ex.172.**

78. During his second placement, Chivers-King was on detention status 9 times:

Status	Start	End	Duration	Reason
Detention	6/14/21 16:35	6/17/21 16:30	2 days, 23 hrs, 55 min.	Property destruction/Staff assault
Detention	7/26/21 16:15	7/27/21 16:15	1 day, 0 hrs, 0 min.	Property destruction/self-harm
Detention	8.12/21 12:02	8/13/21 1:55	0 days, 23 hrs, 53 min	Property destruction
Detention	8/22/21 15:51	8/24/21 06:15	1 day, 14 hrs, 24 min	Property destruction/self-harm
Detention	9/11/21 19:03	9/13/21 01:50	1 day, 12 hrs, 47 min	Property destruction
Detention	10/3/21 13:58	10/5/21 16:50	2 days, 2 hours, 52 min	Property destruction/Staff assault
Detention	11/1/21 11:40	11/6/21 16:15	5 days, 4 hrs, 55 min	Property destruction/self-

				harm
Detention	11/18/21 11:15	11/24/21 10:32	6 days, 23 hrs, 18 min	Property destruction
Detention	11/28/2 11:32	12/9/21 08:00	10 days, 20 hrs, 28 min	Property destruction/Self-harm

Ex. 172.

79. On 6/14/21, Chivers-King was placed on detention status after breaking a computer monitor. As Shaffer was leaving the detention room after trying to process with him, he rushed the door and punched Haun in the face. He was placed in restraints and nursing monitored him. **Exhibit 173** 6/14/21 IR DEFS 003369-3371; **Exhibit 174** 6/14/21 Video DEFS 004061.

80. On 7/26/21, Chivers-King was placed on detention status after punching and kicking the walls of his room and yelling that he wanted to kill himself. He was removed from detention status the next day. **Exhibit 175** 7/26/21 IR DEFS 003372-75; **Ex. 172.**

81. On 8/12/21, Chivers-King walked himself to the detention room after becoming escalated and breaking a window. Nursing examined and treated his hand. Mike and Mark Nelson were involved. He was removed from detention status the next day. **Exhibit 176** 8/12/21 IR DEFS 003376-79; **Ex. 172.**

82. On 8/22/21, Chivers-King was placed on detention status after he became upset and yelled at staff, hit and headbutted a window, and threw a chair. Staff, including Shaffer, processed with him. Nursing examined him. He was removed from detention status 8/24/21. **Exhibit 177** 8/22/21 IR DEFS 003386-3389. **Exhibit 178** 7/30/21-11/3/21 D4 Logbook DEFS 015226-015383 at DEFS 015269; **Ex. 172.**

83. On 9/11/21, staff placed Chivers-King on detention status after he threw a chair at a window, shattering it. Weber was notified. His behavior was unimproved 9/12/21. Shaffer and Mike Nelson

were present for the 9/12/21 incident. Nursing examined him. Weber signed both reports.¹⁰

Exhibit 180 9/11/21 IR DEFS 003390-92; **Exhibit 181** 9/12/21 IR DEFS 003393-95; **Ex. 172**.

84. On 10/3/21, staff placed Chivers-King on detention status after he threatened staff and shattered a window by throwing a chair. He remained on detention status until 10/5/21, at 4:50pm.

Exhibit 182 10/2/21 IR DEFS 003400-02; **Ex. 172**.

85. On 11/1/21, Chivers-King requested to go on detention status after continually refusing to go to class or follow instructions, saying he was going to hurt someone or himself and damage property, and his destructive behaviors continued throughout the day. Eventually, staff, including Shaffer, placed him in restraints to stop his behavior. Mike Nelson attempted to process with him throughout this event. His destructive behavior continued the next day and he was restrained for his safety and to prevent further damage to the detention room. Nursing monitored him during this restraint. Because the toilet in the Dorm 4 detention room was out of order, Gilmore approved a transfer to the Dorm 2 detention room. **Exhibit 183** 11/1/21 IR DEFS 003403-3405; **Exhibit 184** 11/1/21 IR DEFS 003406-10; **Exhibit 185** 11/2/21 IR DEFS 003411-16; **Exhibit 186** 11/2/21 Video DEFS 004062; **Ex. 172**.

86. On 11/6/21, while still on detention status on Dorm 2, Chivers-King continued his destructive and unsafe behaviors by hitting the light, camera, and window; tearing his mattress; hitting himself; cursing at, charging, and threatening staff; and, activating the sprinkler and flooding the detention room. [REDACTED]

[REDACTED]. **Exhibit 187** 11/6/21 IR DEFS 003417-3419; **Exhibit 188** 11/6/21 Video DEFS 004063.

87. He returned to Dorm 4 [REDACTED] the evening of 11/16/21 and was placed on Dorm 3 the next day. **Ex. 172**.

¹⁰ Chivers-King escalated again on 9/13/21, but Mike Nelson deescalated him. **Exhibit 179** 9/13/21 IR DEFS 003396-3399; **Ex. 178** at DEFS 015311. Weber signed the incident report related to this event. *Id.*

88. On 11/18/21, staff escorted Chivers-King to the Dorm 3 detention room after he refused to follow instructions or process with staff and kicked the walls and door of his room, breaking the lock. In the detention room, his destructive behavior continued, including an attempt to destroy the fire suppression system. He was moved to the Dorm 2 detention room to prevent distraction to other students or him rendering the Dorm 3 detention room unusable. On Dorm 2, he broke the detention room sprinkler, setting off the fire alarm and flooding the room. Mike Nelson called [REDACTED] **Exhibit 189** 11/18/21 IR DEFS 003420-3423.

89. He continued to engage in destructive and unsafe behaviors the next several days. He remained on detention status on Dorm 2 until 11/22/21 and then on Dorm 4 until 11/24/2021. **Ex. 89**, at 11074-89; **Ex. 172**; **Exhibit 190** 11/18/21-11/24/21 SML DEFS 004048-4049.

90. On 11/28/21, Chivers-King threw his water bottle at a window, shattering it. He threatened self-harm and scratched himself with glass before throwing the bottle again, which broke, and threatening to assault staff with the bottle. [REDACTED]

[REDACTED] Shaffer was present for this event. Chivers-King was placed on detention status and moved to Dorm 2. **Exhibit 191** 11/28/21 IR DEFS 003424-30; **Exhibit 192** 11/28/21 Video DEFS 004064.

91. Over the next 4 days, he continued his disruptive and unsafe behaviors by threatening self-harm, hitting and kicking the door, punching the ceiling, tearing up clothes, and pulling metal from his retainer and using it to scratch the camera covers, window, and himself. Nursing examined him and found no significant injury. **Exhibit 193** 11/28/21-12/9/21 SML DEFS 004050-51; **Exhibit 194** 12/1/21 IR DEFS 003431-33.

92. He remained on detention status on Dorm 2 until 12/9/21 and returned to Dorm 4 that evening.

Ex. 172 at DEFS 003613, **Ex. 193**; **Exhibit 195** *11/3/21-2/19/22 D4 Logbook* DEFS 015384-15541 at DEFS 015447; **Exhibit 196** *2021 D2 Det. Logbook* DEFS 010999-11157 at DEFS 011121.

93. On 12/10/21, he continued his destructive and unsafe behaviors by, for example, threatening staff and flipping a desk. He was eventually restrained but asserts no claims against anyone involved. He continued to be combative, fought his way out of the upper body restraints, and began swinging them at staff as a weapon, striking lights in his room and yelling threats. [REDACTED]

[REDACTED]. **Exhibit 197** *12/10/21 IR* DEFS 003434-37.

94. He remained at WDCD until 4/7/22 (117 days). He discharged from WBS 5/5/22, [REDACTED]

95. Weber's involvement in these incidents was limited to signing the related incident reports. **Ex. 137; Ex. 140; Ex. 141; Ex. 143; Ex. 145; Ex. 148; Ex. 153; Ex. 156; Ex. 162; Ex. 175; Ex. 176; Ex. 177; Ex. 180, Ex. 182; Ex. 183; Ex. 184; Ex. 187; Ex. 189; Ex. 194; Ex. 197.**

96. For every detention status exceeding one day, the record demonstrates that Chivers-King was not kept in isolation but instead had multiple interactions with staff as well as other human interactions and distractions. Logbook records demonstrate that he, while on detention, attended meetings off dorm; attended meetings outside of the detention room; saw his PMHNP (Foresman); attended doctor's appointments; had telephone calls outside of the detention room; saw his counselor (Fritzler); was offered reading materials, was provided a letter and orientation packet; was given paper and pencil; had a phone meeting with his attorney and mother; attended a court hearing; watched television; was let out of the detention several times to work on school or otherwise be productive; was allowed out of the room to a pod; was allowed out to take walks; and was provided basic necessities including meals, restroom breaks, showers, hygiene, and

medications. See **Exhibit 198** 4/16/20-5/21/20 *DI Logbook* DEFS 009277-9433 at 009279-9284 (4/16/2020-4/17/2020), 009284-9316 (4/17/2020-4/24/2020), 009328-9337 (4/27/20-4/29/20), 009396-9428 (5/12/20-5/19/20); **Exhibit 199** 4/28/20 *CPCC Psych. Eval* DEFS 003714-16; **Exhibit 200** *Nursing Case Mgmt. APRN Note* DEFS 003937 (4/27/20-4/29/20); **Ex. 132** at 4/29/20 entry; **Exhibit 201** 5/14/20 *CPCC Progress Note* CPCC001608; **Ex. 146**; **Ex. 150**; **Exhibit 202** 5/21/20-7/6/20 *DI Logbook* DEFS 009434-9589 at 9471-9478 (5/30/21-6/1/20); **Exhibit 203** 7/6/20-8/29/20 *DI Logbook* DEFS 009590-9745 at 009614-9643 (7/13/20-7/20/20); **Ex. 155** at DEFS 10664-10677 (7/20/20-7/27/20); **Ex. 135** at 010789-10803 (11/3/20-11/11/20); **Ex. 167** at DEFS 011731-11741 (2/22/21-2/24/21); **Exhibit 204** 4/18/21-7/30/21 *D4 Logbook* DEFS 015070-15225 at 015158-15167 (6/14/21-7/17/21), 015215-15219 (7/26/21-7/27/21); **Ex. 178** at 015264-015269 (8/22/21-8/24/21), 015305-15311 (9/11/21-9/13/21), 015333-15340 (10/3/2021-10/5/2021), 015377-15381; **Ex. 196** at 011059-11074 (11/1/21-11/6/21), 11074-11089 (11/18/21-11/22/21); **Ex. 195** at 15421-15425 (11/18/21-11/24/21). The only record of him not receiving a basic need on detention status is when he refused a shower and refused his medications. **Ex. 178** at DEFS 015337; **Ex. 204** at 015166.

97. Chivers-King testified he considered detention status to be “solitary confinement.” He guessed staff placed him on “solitary confinement” about 20 times but did not know the actual number. He testified when he was in “solitary confinement” the only people he talked to were the staff members he “got along with,” who would come talk to him when he requested it if they were not busy, and that he wouldn’t have “gotten out of there it wasn’t for their [] motivation.” **Exhibit 205** Chivers-King Depo. 90:21-91:12, 93:15-17, 125:24-126:1, 146:12-147:17. 149:14-16, 155:9-11, 156:5-7, 199:3-5, 200:23-25.

98. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

99. He attended CHS, although this was sometimes limited either because he refused to go or participate, or because his behavior made it unsafe for him to do so. **Ex. 5**, *Pomeroy* ¶ 27; *see also Ex. 205* p. 194:22-25; **Exhibit 206** *BCK Education Logs* DEFS 003112-3122, 003132-3140.

100. He did not request any accommodations for any mental health diagnoses or physical conditions, nor was it obvious he needed any. **Ex. 21**, *Adams* ¶ 12; **Ex. 2**, *Weber* ¶ 31; **Ex. 171** *Mike Nelson* ¶ 10; **Ex. 133** *Turner* ¶ 8 ; **Ex. 34** *Schwalbe* ¶ 7.

VI. Statement of Facts Concerning Plaintiff Tolar

101. Tolar was admitted to WBS on 6/22/20 after being adjudicated delinquent. **Exhibit 208** Tolar Depo. 105:5-10; **Exhibit 222**, *5/7/20 Order for Change of Placement* DEFS 002150-2151.

102. Tolar has cerebral palsy and epilepsy. He wears a brace on his lower right limb, which he described as a brace to support his foot, ankle, and leg. He has also been diagnosed with bipolar depression, [REDACTED], and ADHD. **Ex. 208** at 21:21-22:9, 107:25-108:1, 142:10-143:10, 148:14-19, 154:5-157:19.

103. The day Tolar was admitted, WBS staff picked him up for transportation to WBS. The driver who picked him up placed him in handcuffs and ankle cuffs, which Tolar wore during the ride to WBS. Tolar does not know the identity of the person who drove him. Tolar believes he was injured by the handcuffs he wore during transport to WBS. He described the injury as “[t]he redness.” He believes the handcuffs were too tight so he could not really move, and his hands “would get tingly” during the drive to WBS. **Id.** at 101:9-104:8

104. Other than the handcuffs and ankle cuffs that Tolar wore during the transport to WBS, no

other restraints were placed on Tolar's wrists and ankles while he was at WBS. **Id.** at 104:13-18.

Dorm Placements

105. Due to the COVID-19 pandemic, Tolar was initially quarantined on Dorm 1 from 6/22/20 until 6/25/20, then moved to Dorm 4, where he stayed until 12/11/20. Elsa was the Dorm 4 Director during that period. On 12/11/20 he transferred to Dorm 1, where he stayed until he discharged from WBS on 2/6/21. Turner was the Dorm 1 Director during that period. **Ex. 8, Elsa ¶ 4; Ex. 133 Turner ¶ 4; Exhibit 202** at 009546-57; **Ex. 208** at 18:23-19:2.

106. Regarding the allegations in the Fourth Amended Complaint ¶¶ 188-190, Tolar did not defecate in his pants because he did not know how to use a toilet on his first night at WBS. **Ex. 208** at 172:25-173:2; ECF No. 89 at ¶¶ 188-190.

107. When assigned to Dorm 4, Tolar was never on detention status. At times, he was placed on OCS while on Dorm 4, for conduct including not following daily expectations, arguing with staff, and refusing to do group assignments. Tolar contends Schwalbe sent Tolar to his dorm room twice but he doesn't know how long he was in his room. **Exhibit 209, Tolar Status Info Sheet DEFS 005057; Ex. 8, Elsa ¶ 37; Ex. 208** at 166:7-167:25.

108. When Tolar was on Dorm 1 from 12/11/20 until his discharge, he was not on detention status or OCS. He was in the dorm community and only required to stay in his room at the same time as other students, such as sleeping overnight. **Ex. 209; Ex. 133 Turner ¶ 16.**

Seizure-Related Facts

109. When Tolar was on Dorm 4, only the B Pod rooms had cameras. **Ex. 8, Elsa ¶ 16.**

110. Overnight on Saturday, 8/15/20, staff observed Tolar appear to have a small seizure while sleeping in room C-5. Staff entered the room to check him. He woke up and was able to focus; then went back to sleep. After checking on Tolar, staff called Dahlke. She recommended

contacting 911 if it occurred again. **Exhibit 210**, 6/23/20-9/8/20 *D4 logbook* DEFS 014446-14602 at 014552; **Exhibit 211**, 8/15/20 *IR* DEFS 004662-63; **Ex. 208** at 144:18-145:5.

111. That same date, Tolar's room was changed to B-2, so he could sleep in a camera room, to better monitor him at night. Tolar understands that was why he was moved. **Exhibit 212**, 8/15/20 *Schwalbe Email* DEFS 041387; **Ex. 210** at DEFS 014553; **Ex. 208** at 145:14-22.

112. On the following Monday, 8/17/20, Dahlke examined Tolar. She noted that based on her recommendation, Tolar was moved to a camera room. **Exhibit 213**, 8/17/20 *Med. Request* DEFS 004748; **Exhibit 214**, 8/17/20 *Haun Email* DEFS 037382–83.

113. On 8/24/20, Tolar submitted a medical request about his seizure, which Elsa asked him to prepare. [REDACTED]. Dahlke referred Tolar to Dr. Thurston. **Exhibit 215**, 8/24/20 *Med. Request* DEFS 004750; **Ex. 8**, *Elsa*. ¶ 38.

114. On 8/27/20 Dr. Thurston examined Tolar. Dr. Thurston determined that it was not certain that he had a seizure. He ordered that Tolar continue to sleep in a camera room. **Exhibit 216**, 8/27/20 *Physician Encounter* DEFS 004783; **Ex. 210** at DEFS 014571.

115. On 9/8/20, staff informed Nurse Dahlke that Tolar reported he thought he had a seizure overnight. Dahlke reviewed the video footage and noted he appeared to have a seizure that lasted about 60 seconds. Dahlke discussed the situation with Elsa and DuPree. They decided to move him to another camera room that also had a mattress on the floor, to protect him from a fall in case he had another seizure. He was moved to B-1 for that reason. Tolar believes this was appropriate. He continued sleeping in a room with a mattress on the floor throughout his stay at WBS. **Exhibit 217**, *Dahlke Depo.* 163:22-164:3, 166:24-167:21, 168:20-169:2; **Exhibit 218**, 9/8/20 *Nursing Note* DEFS 004781 (*Depo. Ex. 159*); **Exhibit 219**, 9/8/20 *IR* DEFS 004664–65; **Ex. 210** at DEFS 014601; **Exhibit 220**, 9/9/20 *Schwalbe Email* DEFS 041257; **Ex. 208** at 146:5-16.

116. [REDACTED]

117. After 9/8/20, Tolar did not have another seizure at WBS. **Ex. 8**, *Elsa* ¶ 39; **Ex. 133** *Turner* ¶ 13; **Ex. 208** at 147:18-24.

COVID-19 Quarantine Room Placement

118. [REDACTED]

119. [REDACTED] Tolar fell behind in school and did not participate in groups and other activities. **Exhibit 225**, *12/1/20 Foresman Progress Notes* CPCC001131-33.

Botulinum Toxin Injections

120. Before Tolar was admitted to WBS, he received botulinum toxin injections in his right leg for pain management. The medical provider who oversaw those injections was located in Utah. **Ex. 208** at 109:12-17, 110:4-6; **Exhibit 226** *7/2/20 Physician Encounter* DEFS 004782.

[REDACTED]

[REDACTED]

[REDACTED]

125. Weber approved the medical home leave that Elsa proposed. **Ex. 2, Weber ¶ 40.**

[REDACTED]

127. Tolar acknowledges he received injections while a WBS resident but believes “it was a big fight” to get them, based solely on information his mother told him. He does not have independent knowledge about how WBS came to approve the trip. **Ex. 208** at 113:19-20, 118:3-18.

Leg Brace and Ankle

128. Tolar testified his brace was taken from him when he had been at WBS for six months, around December 2020. He does not recall who took the brace but believes Elsa was involved in some way. It occurred while he was assigned to Dorm 4. He agrees that he had his brace during

the period that he was on the medical home leave. **Id.** at 127:5-128:24.

129. On 8/4/20, Tolar submitted a medical request concerning his ankle. Nurse Powell met with him and noted a history of pressure sores from his brace. She documented observing “red & abrasion area” on his right outer ankle and leg. She gave a temporary restriction for him to wear his brace only when outdoors; to take it off at school; and to not wear it on dorm. She placed him on lower body restrictions. Haun made a logbook entry about it to inform Dorm 4 staff. **Exhibit 241**, *8/4/20 Med. Request* DEFS 004744; **Ex. 210** at DEFS 014529 (8/4/20).

130. On 8/10/20, Nurse Powell followed up with Tolar. She noted the pressure sore was healing and continued the plan of care for one more week. **Exhibit 242** *8/10/20 Med. Request* DEFS 004745.

131. On 8/24/20, Nurse Dahlke saw Tolar about a medical request he submitted. He said his right ankle was very painful the evening before but had since improved. He felt not wearing his brace as much as usual on Sunday may have aggravated it. Given the reported improvement, Dahlke made no changes to his restrictions. **Exhibit 243** *8/24/20 Med. Request* DEFS 004749.

132. 8/31/20, Nurse Powell saw Tolar again. She noted his left ankle was more red than the last time she saw it, and, that for the evening, DuPree set him in a different area with legs out in front. She also examined his shoes to see if they are rubbing. **Exhibit 244** *8/31/20 Med. Request* DEFS 004752.

133. DuPree updated Elsa via email, stating the sore appeared to be from him sitting cross legged on the floor. She responded they would have him sit in a chair. **Exhibit 245** *9/1/20 Elsa Email* DEFS 048417.

134. On 9/8/20, Tolar’s brace broke. Dorm 4 staff notified nursing so it could be repaired. Nurse Dalhke noted that it was custom-made, and asked WBS maintenance to make a temporary repair

until it could be replaced. She restricted Tolar from lower body exercise because she thought it would be unsafe without the brace. She allowed him to ambulate to and from school with standby assistance of staff. Dorm 4 staff was directed to walk next to Tolar during daily school movement.

Exhibit 246 9/8/20 Dupree Email DEFS 030192; **Ex. 218**; **Ex. 217** at 163:22-165:11.

135. On 9/9/20, Schwalbe reported to Dorm 4 staff that maintenance was able to repair the brace.

Exhibit 247 9/9/20 Schwalbe Email DEFS 041257.

136. Elsa never told anyone that Tolar needed to compensate maintenance or WBS for repairing his brace. WBS has its own maintenance staff who are employees. **Exhibit 248** Elsa Depo. 44:15-45:7.

137. On Friday, 9/11/20, the brace broke again. Nurse Powell informed Dorm 4 staff maintenance would attempt to repair it Monday. **Exhibit 249** 9/11/20 Powell Email DEFS 037362.

138. On Monday, 9/14/20, maintenance repaired the brace and it was returned to Tolar. To maintain the integrity of the brace, Dahlke recommended restricting him from PT. Elsa agreed. **Exhibit 65** at 014612 (9/14/20 Elsa Note); **Exhibit 251** 9/14/20 Elsa/Dahlke Email DEFS 047217-18.

139. On 9/21/20, Dahlke met with Tolar. He asked: (1) “How long do I have to sit in a chair?” and (2) “Why am I on full body restriction?” Tolar told her he wanted to be able to sit on the floor and that he felt he could without irritating his ankle. Dahlke agreed to his request at staff discretion, but warned that if a sore, pain, or irritation returned, he must go back to sitting in the chair. She explained the full body restriction was to prevent more damage to the brace. **Exhibit 252** 9/20/20 Med. Request DEFS 004753.

140. On 9/29/20, Tolar submitted a medical request. Nurse Powell responded and noted Tolar and staff were discussing options to participate safely in physical activity. After further discussion,

Tolar's restrictions were modified and he was allowed to perform upper body exercises. **Exhibit 253** 9/29/20 *Med. Request* DEFS 004755; **Ex. 34** *Schwalbe* ¶ 10.

141. On 12/8/20, Nurse Powell saw Tolar about a medical request relating to a left ankle callous, told him he may use lotion on the calluses, and documented that the skin was in good condition. **Exhibit 254** 12/8/20 *Med. Request* DEFS 004767.

142. On 12/9/20, Schwalbe sent an email to Dorm 4 reiterating instructions, "per Mr. Weber and Mrs. Dahlke," for Tolar's use of the brace and the need for him to sit in a chair. **Exhibit 255** 12/9/20 *Schwalbe Email* DEFS 040825.

143. On 12/12/20, after Tolar transferred to Dorm 1, Turner notified Dorm 1 staff he needed to wear his brace except when in his dorm room and noted he was restricted from lower body PT and needed to be in a camera room due to a history of seizures. **Exhibit 256** 12/12/20 *Turner Email* DEFS 047851.

144. On 1/6/21, Nurse Powell responded to a medical request from Tolar regarding PT. She explained he could not do activities that would put stress on his brace or throw him off balance, and provided examples of exercises he could and could not do. **Exhibit 257** 1/6/21 *Med. Request* DEFS 004769; **Exhibit 258** 12/3/20-2/8/21 *DI Logbook* DEFS 009746-9901 at 009827.

145. On 1/26/21, Nurse Powell responded to a medical request from Tolar regarding stretches and his brace. She referred him to Turner regarding questions about his brace. **Exhibit 259** 1/26/21 *Med. Request* DEFS 004772.

146. The next day, after speaking with Tolar, Turner relayed his questions about the brace to Nurse Dahlke. She recommended he wear shoes with his brace. Turner informed Dorm 1 staff. **Exhibit 260** 1/27/21 *Emails* DEFS 047752; **Exhibit 261** 1/27/21 *Turner Email* DEFS 0020708.

147. Aside from ensuring that Tolar's leg brace was provided to nursing for repair the two times

it broke, Elsa did not withhold Tolar's leg brace from him when he needed it. She did not tell WBS staff to withhold his brace when he needed to use it. **Ex. 8**, *Elsa* ¶ 40.

[REDACTED]

Educational Services at WBS

149. When Tolar started taking classes at CHS during the summer 2020 semester, he was in 12th grade. **Ex. 5**, *Pomeroy* ¶ 21; **Exhibit 263** 2/5/21 *CHS Transcript* DEFS 004519-20.

[REDACTED]

151. [REDACTED]

Ex. 5, *Pomeroy* ¶ 26; **Ex. 208** at 141:15-18, 142:1-6.

152. [REDACTED]

[REDACTED] **Ex. 5**, *Pomeroy* ¶ 23; **Exhibit 265** *Tolar Edu. Logs* DEFS 004469-90.

Mental Health Services at WBS

[REDACTED]

156. Schwalbe accepted Tolar had an ADHD diagnosis. He did challenge him to not use his mental or physical conditions as an excuse for avoiding expectations or setting goals. **Ex. 34** ¶ 13.

157. At WBS, Tolar did not make any requests for accommodations for any mental health diagnoses or disabilities. **Ex. 2, Weber** ¶ 39; **Ex. 8, Elsa** ¶ 8; **Ex. 133 Turner** ¶ 10.

VII. Statement of Facts Concerning Plaintiff D.H.

158. In March 2024, the court adjudicated D.H. Delinquent and ordered him into DFS custody placed at WBS for an indefinite term. **Exhibit 268 3/11/24 Order of Commitment** DEFS 005195.

159. D.H. arrived at WBS on 3/21/24. WBS was made aware he had a history of running away from previous placements. **Exhibit 269 Crit. Info. Card** DEFS 005521; **Exhibit 270 Status Info. Sheet** DEFS 005491; **Ex. 18** at 86:17-21, 88:12-25; **Ex. 21 Adams** ¶ 15; **Ex. 2 Weber** ¶ 35.

160. D.H. was assigned to Dorm 3 where Tate Adams was the Director. **Ex. 270; Ex. 21** ¶ 4.

161. D.H. arrived at WBS without any active prescriptions. **Exhibit 271 Parent/Guardian History Questionnaire** DEFS 005607-5608; **Ex. 18**, at 128:13-129:8; **Ex. 21, Adams** ¶ 16. His DFS

caseworker made arrangements for Seattle Children's Hospital to conduct a psychiatric evaluation to determine whether restarting ADHD medication was appropriate. **Exhibit 272** 6/5/24 *Psych Eval*. DEFS 001721-28 (Depo. Ex. 185). The same day Seattle Children's provided its report to D.H.'s DFS caseworker, Adams referred D.H. to a PMHNP. **Ex. 21**, *Adams* ¶ 17. **Ex. 18**, at 128:13-129:8; 132:4-141:4; **Exhibit 273** 6/25/24 *Referral* DEFS 005625 (Depo. Ex. 186). She prescribed Zoloft, which D.H. began taking about three days later. **Exhibit 274** 7/2/24 *Psych Eval* DEFS 005627-5640 at 005639 (Depo. Ex. 187); **Ex. 18**, at 140:18-141:4.

162. D.H. was involved in a variety of incidents during his placement at WBS.

163. March 27, 2024, staff learned D.H. expressed an intent to run away to peers. He was required to wear soft leg restraints at school and placed on observation status in specialized clothing. Weber, Adams, and Del signed the incident report. No other Defendants against whom D.H. asserts claims were involved. He remained on that status until April 9, 2024, during which he continued normal programming under heightened observation, including schoolwork, chores, doctor visits, [REDACTED] group work, visits, and nursing services. **Exhibit 275** 3/27/24 *IR* DEFS 005339-41; **Ex. 270**; **Exhibit 276** *School Log* DEFS 05212-13; **Exhibit 277** 1/16/24-5/13/24 *D3 Logbook* DEFS 012567-12727 at 012658-12682; **Ex. 21**, *Adams* ¶¶ 18-19.

164. April 18, 2024, D.H.'s behavior during movement suggested he was considering running away. Adams placed him on OCS 3 in specialized clothing. Weber, Adams, and Del signed the incident report. No other Defendants against whom he asserts claims were involved. He remained on this status for about 2 days. **Exhibit 278** 4/18/24 *IR* DEFS 005342-5343; **Ex. 270**.

[REDACTED]
[REDACTED] Staff, including Adams, decided to place him on observation status in specialized clothing. Weber, Adams, and Del signed the incident report. No other Defendants

against whom he asserts claims were involved. He remained on this status until April 30, 2024, during which he processed with staff, was in and out of his room and the detention room, had a televisit, did school work, and saw nursing, among other activities and needs. **Exhibit 279** 4/26/24 IR DEFS 5344-45; **Ex. 270**; **Ex. 277** at DEFS 012702-10; **Ex. 21**, *Adams* ¶¶ 20, 22.

166. May 3, 2024, staff placed D.H. on OCS 3 in specialized clothing after discovering he had taken a roll of electrical tape and was throwing it. Adams, Weber, and Del signed the incident report. D.H. remained on OCS until May 5, 2024, during which he had a visit on dorm, among other activities and needs. **Exhibit 280** 5/3/24 IR DEFS 005348-49; **Ex. 277** at DEFS 012713-12716; **Ex. 270**; **Ex. 21**, *Adams* ¶ 23.

167. May 6, 2024, D.H. was placed on temporary community restriction after he broke a window to run away. Weber and Del were notified. They, Haun, and Adams signed the incident report. **Exhibit 281** 5/6/24 IR DEFS 005352-53; **Exhibit 282** 5/6/24 TCR DEFS 005433.

168. During the rest of his time on Dorm 3, D.H. continuously refused to follow instructions or engage in programming, repeatedly disrupted his peers, and was generally noncompliant. **Ex. 21**, *Adams* ¶ 26; **Exhibit 283** 5/17/24 *Voided IR* DEFS 005358-60; **Exhibit 284** *Dorm Progress Notes* DEFS 005126-5136; **Exhibit 285** *Accountability Log* DEFS 005139-5160 at 5150-5159; **Ex. 282**; **Exhibit 286** 6/12/24 TCR DEFS 005208.

169. During this time, staff provided him highly individualized attention to try to get him on track with programming. D.H. was assigned to use the Dorm 3 detention room as his bedroom because it did not have a window to the outdoors for further runaway attempts. So, D.H. was frequently in and out of the detention room during this time. But, at no time was he “isolated” in the detention room for extended periods.. He was offered many opportunities to leave the detention room; process with staff; engage in individual and group therapy; see nursing; attend

appointments; participate in physical training; attend televisits and dorm visits; work on computers, schoolwork, and other assignments; and otherwise had basic needs attended to, such as meals, hygiene, and showers. **Ex. 21**, *Adams ¶¶ 27-30*; **Ex. 277** at 0012718-12727; **Exhibit 287** 5/13/24-7/31/24 *D3 Logbook* DEFS 0012728-12808; **Exhibit 288** 5/9/24-5/17/24 *D3 Detention Logbook* DEFS 008031-8046; **Exhibit 289** CPCC Notes, CPCC000935-979, 1011-1013; **Ex. 285** at 5150-5159; **Ex. 272**; **Exhibit 290** 5/6/24-7/2/24 *Med. Requests* DEFS 005572-5590; **Ex. 276**.

170. During this time, D.H. continued to indicate intent to run away. One such incident resulted in his only detention status. May 9, 2024, a WBS student informed staff D.H. had called out to him and pantomimed a running motion with his fingers. Adams placed D.H. on detention status. Weber, Del, and Adams signed the incident report. D.H was in and out of the detention room until May 11, 2024, during which he processed with staff, read, and staff provided needs such as showers, meals, bedding. **Exhibit 291** 5/9/24 *IR* DEFS 005356-57; **Ex. 270**; **Ex. 277** at DEFS 012721; **Ex. 21** *Adams ¶¶ 31-32*; **Ex. 288** at DEFS 008031-8046.

171. D.H. was restrained once, June 30, 2024, after hours of him continuously refusing to follow instructions or meet expectations, he tried to push his way past staff through the detention room door. No Defendant against whom D.H. asserts claims participated in the restraint, although Haun was present for portions of the incident and signed the incident report along with Weber and Del. **Exhibit 292** 6/30/24 *IR* DEFS 005361-63; **Exhibit 293** 6/30/24 *Video* DEFS 005821.

172. July 2, 2024, Haun briefly used his arm to move D.H. out of the detention room doorway to close it after D.H. continuously refused to follow instructions. After, D.H. laid down and laughed. **Exhibit 294** 7/2/24 *Video* DEFS 005824 at about 7:24:00-7:25; **Exhibit 295** *Haun Depo.* at pp. 195:1-197:25.

[REDACTED]

174. D.H. discharged from WBS [REDACTED] No defendant was involved in any significant event with D.H. during his placement on Dorm 1.

175. D.H. claims that, on 4 occasions, Coronado refused to provide him clean blankets after he wet the bed, instead embarrassing him by displaying his soiled underwear to peers. ECF 89 at ¶¶ 244-246; **Ex. 18** at 141:17-147:21. He also claims Coronado once refused to give him dinner after he missed it by staying on the phone too long. **Id.** at 148:1-150:25; ECF 89 ¶ 248.

[REDACTED]

177. At WBS, D.H. did not request any accommodations or modifications to his programming for any mental health diagnoses or physical conditions, nor was it obvious he needed any.¹¹ **Ex. 21**, *Adams* ¶ 13; **Ex. 2**, *Weber* ¶ 38; **Ex. 19**, *Del* ¶ 17.

VIII. Statement of Facts Concerning Plaintiff Willis

First Placement

178. The court adjudicated Willis Delinquent and ordered him into DFS custody for placement

¹¹ Adams had discussions with D.H. and/or his mother regarding D.H.’s ADHD medications; Adams took steps to address that issue, as described above. *See, supra* ¶161.

at WBS for an indefinite period. **Exhibit 300** 2/8/19 *Order of Disposition* DEFS 006640-6641.

179. Willis arrived at WBS on February 11, 2019, and was placed on Dorm 1. The Dorm 1 Director at the time was Julio Torres. **Ex. 19**, *Del ¶18*; **Exhibit 301** 2/15/19 *Admission Memo.*, DEFS 007946-7947.

180. Between that date and 4/20/19, Willis was involved in 7 incidents arising from unsafe behaviors. None of the Defendants against whom Willis asserts claims were involved in these incidents. **Exhibit 302** 2/20/19 *IR* DEFS 007104-7105; **Exhibit 303** 2/23/19 *IR* DEFS 007106-7109; **Exhibit 304** 3/12/19 *IR* DEFS 007110-7113; **Exhibit 305** 3/29/19 *IR* DEFS 007114-7116; **Exhibit 306** 3/30/19 *IR* DEFS 007117-7121; **Exhibit 307** 4/3/19 *IR* DEFS 007122-24; **Exhibit 308** 4/20/19 *IR* DEFS 007125-7128;¹² *see also* **Exhibit 309** *Status Info Sheet* DEFS 007354-7356.

181. On 4/22/19, staff restrained Willis. Mark Nelson was involved. He first attempted to remove a paper from Willis' hand without force. After other staff attempted to remove it from Willis' mouth, he radioed for assistance, managed Willis' legs, and placed handcuffs. Willis resisted. Mark Nelson agreed that the paper was unsafe because it could obstruct the airway. About 2 hours after restraints were removed, staff restrained him again after he punched the door and assumed a "fighting stance." No Defendant against whom Willis asserts claims was involved in the afternoon restraint. **Exhibit 310** 4/22/19 *IR* DEFS 007129-7132; **Exhibit 311** *Mark Nelson Depo.* 148:5-21, 150:24-:151:7.

182. The next day, Willis self-harmed and the decision was made to place him in the safety restraint chair. No Defendant against whom he asserts claims was involved in the decision. Elsa and Haun subsequently arrived in response to a request for assistance. Their limited roles in assisting are described in the report. Neither Elsa nor Haun participated in placing Willis in the

¹² The 4/20/19 Incident Report contains a signature from a "Mr. Nelson"; however, the content of the report makes clear that this refers to Brett Nelson, who is not a Defendant.

chair as they returned to Dorm 4 after the Dorm 1 staff placed Willis in soft wrist and ankle restraints. **Exhibit 312** 4/23/19 2019 IR DEFS 007133-7137; **Exhibit 313** 3/30/19-5/26/19 D1 Logbook DEFS 8339-8494 at 008416-8417; **Ex. 248** Elsa Depo. 213:20-214:4, 215:8-10; **Ex. 295** Haun Depo. 141:16-142:11; **Ex. 8**, *Elsa*. ¶ 41; **Exhibit 314** *Jim Haun Affidavit* at ¶ 7.

183. Between 5/20/19 and 6/9/19, Willis was involved in 3 more incidents arising from unsafe behaviors, in which no Defendant against whom he asserts claims was involved. **Exhibit 315** 5/20/19 IR DEFS 007138-7141; **Exhibit 316** 6/2/19 IR DEFS007142-7145;¹³**Exhibit 317** 6/9/19 IR DEFS 007146-7148; *see also* **Ex. 309**; **Ex. 313** at 008481-8486; **Exhibit 318** 5/26/19-7/26/19 *D1 Logbook* DEFS 008495-8652 at 008522-8528.¹⁴

184. Turner became Dorm 1 Director in July 2019. **Ex. 133** *Turner Aff.*, ¶ 4.

185. On 7/16/19, staff placed Willis on detention status after he was continually disruptive. Turner and Weber signed the incident report. Willis remained on detention for about 26 hours, during which staff processed with him and provided basic needs and nursing treated him for a rash. **Exhibit 319** 7/16/19 IR DEFS 007149-7151; **Ex. 309**; **Ex. 318** at DEFS 008620-8625; **Exhibit 320** 7/17/19 IR DEFS 007152-7154.

186. On 8/5/19, staff restrained Willis after he refused to give up his pencil and resisted attempts to retrieve it. Staff placed him on detention status and notified Weber. He and Turner signed the incident report. Willis remained on detention status for about 37 hours, during which nursing examined him, he was provided reading materials, and he had a discussion with Weber outside of the detention room, among other basic needs. **Exhibit 321** 8/5/19 IR DEFS 007155-7157; **Exhibit 322** 7/26/19-10/10/19 *D1 Logbook* DEFS 008653-8808 at DEFS 008677-8684; **Exhibit 323** 2019.08.06 *Med Request* DEFS 007467.

¹³ The June 2, 2019 Incident Report refers to a “Mr. Nelson”; however, the report is again signed by Brett Nelson.

¹⁴ This is mislabeled as an RMO logbook, but its contents make clear it is a Dorm 1 Logbook. *See id.*

187. Willis discharged from WBS on 8/8/19. **Ex. 309**; **Ex. 322** at 008685.

Second Placement

188. Within a week, Willis began violating his probation, and, as a result was placed at Meadowlark Academy. Shortly after, the State filed a delinquency petition for assaulting Meadowlark staff, and the court adjudicated him delinquent and ordered him to WBS for an indefinite term. **Exhibit 324** *8/20/19 Pet'n for Revocation* DEFS 006660; **Exhibit 325** *9/13/19 Delinquency Pet'n* DEFS 006666 ¶ 3; **Exhibit 326** *10/29/19 Order of Disposition* at DEFS 006683.

189. On 12/3/19, he was readmitted and placed on Dorm 1.¹⁵ **Exhibit 327** *12/3/19 Memo* DEFS 007960-61.

190. On 12/18/19, staff escorted Willis to Dorm 1 from school in handcuffs and placed him on detention status after he punched the wall of a classroom. Nursing examined his hand. Turner and Weber signed the incident report. Willis remained on detention status for about 29 hours, during which he processed with staff and was provided basic needs. **Exhibit 328** *12/18/19 IR* DEFS 007162-7163; **Exhibit 329** *12/9/19-2/6/20 DI Logbook* DEFS 008965-9120 at 8982-8988.

191. On 1/13/20, staff required Willis to change into specialized clothing after he struck a wall. Nursing staff examined his hand. Turner and Weber signed the incident report. **Exhibit 330** *1.13.20 IR* DEFS 007164-7165; **Ex. 309**.

192. On 1/21/20, staff placed Willis on time out, diversionary, then detention status and later restrained him after he repeatedly punched the door of his room and camera. He resisted. Nursing examined him. Staff notified Weber. He and Turner signed the report. Turner implemented an SMP, approved by Weber. Willis was removed from detention status after about 5 day and 3 hours, during which he was offered access to schoolwork/assignments/reading materials, nursing,

¹⁵ Upon arrival, Willis was temporarily placed on Dorm 4 overnight. **Ex. 309**.

physical training, and processing/conversations with staff, among other basic needs. **Exhibit 331** *1/21/20 IR DEFS 007166-7168*; **Exhibit 332** *1.22.20 SMP DEFS 007925-7926*; **Exhibit 333** *SML DEFS 07927-7928*; **Ex. 329** at 9065-9088; **Exhibit 334** *1/26/20 Med. Request DEFS 007486*.

193. On 1/31/20, Mark Nelson and Shaffer escorted Willis in handcuffs to Dorm 1 after he argued with and stepped towards staff aggressively. He was placed on detention status after he failed to process, then punched a light and door and himself. Nursing examined him. Turner and Weber signed the report. Detention status lasted about 44 hours, during which he was offered processing with staff, nursing, and other basic needs. **Exhibit 335** *1/31/20 IR DEFS 007169-7171*; **Ex. 329** at 009095-9103.

194. On 2/7/2020, staff, including Turner, required Willis to change into specialized clothing after he had to be redirected several times during movement. Turner and Weber signed the report. He remained in specialized clothing until February 14th. **Exhibit 336** *2/7/20 IR DEFS 007172-7174*; **Ex. 309**.

195. On 2/28/20, staff, including Mike Nelson, briefly placed Willis in the school timeout room after he was disruptive during school movement. After processing with Turner, Willis was placed on detention status and required to change into specialized clothing. Weber, Turner, and Mike Nelson signed the incident report. Detention status lasted about 24 hours, during which he processed with staff and had a visit outside the room, among other basic needs. **Exhibit 337** *2/28/20 IR DEFS 007177-7179*; **Ex. 309**; **Exhibit 338** *2/6/20-4/16/20 D1 Logbook DEFS 009121-9276* at 009164-9168.

196. On 3/2/20, staff, including Turner, attempted to process with Willis about communicating with a peer while preparing to move off dorm. After Willis refused to process, he was placed on diversionary and then detention status. He reacted by punching the door, hitting the camera etc.

Staff, including Shaffer and Turner, restrained him, with Shaffer managing his upper body while Turner assisted. He resisted. Nursing monitored him. Weber was notified; he, Turner, and Shaffer signed the incident report. Turner implemented an SMP, approved by Weber. Willis was removed from detention status after about 6 days and 5 hours, during which he was offered access to schoolwork and other assignments/reading materials, nursing staff, and processing/conversations with staff, among other basic needs. **Exhibit 339** 3/2/20 IR DEFS 007180-7182; **Exhibit 340** 3/3/20 SMP DEFS 007929-7931; **Exhibit 341** SML DEFS 07932-33; **Ex. 338** at DEFS 009173-9192.

197. On 3/26/20, staff placed Willis in the detention room after he would not hang up the phone and threw a timer. Staff notified Turner and it was decided he would go on detention status. Staff notified Weber. He and Turner signed the incident report. Detention status lasted about 24 hours, during which he did schoolwork outside the room, and processed with Turner, among other basic needs. **Exhibit 342** 3/26/20 IR DEFS 007183-7184; **Ex. 338** at DEFS 009221-9226; **Ex. 309**.

198. On 3/29/2020, staff placed Willis on diversionary status in the detention room after he argued with staff and failed to ask permission to remove items from the staff desk. Staff notified Turner and she and another staff member decided to place him on detention status. Shaffer and other staff informed him of the decision. He reacted by cussing, yelling, and hitting the wall. Nursing checked him later that day. Weber was notified and he, Turner, and Shaffer signed the report. Willis remained on detention for about 32 hours, during which he saw nursing, among other basic needs. **Exhibit 343** 3/29/20 IR DEFS 007185-7187; **Ex. 338** at DEFS 009230-9235; **Ex. 309**.

199. On 4/8/20, staff placed Willis on diversionary in the detention room. He refused to process with staff, including Turner, or commit to being safe, so he was placed on detention status. Turner and Weber signed the incident report and Turner implemented an SMP, which Weber approved.

Exhibit 344 4/8/20 IR DEFS 007188-7190; **Exhibit 345** 4/9/20 SMP DEFS 007934-35; **Exhibit 346** 4/8/20-3/15/20 SML DEFS 07936-7937.

200. Later that day, staff saw what appeared to be self-harm scratches on Willis. Nursing treated him. On 4/10/20, staff saw more scratches on him. Nursing treated him. Turner and Weber signed the incident reports regarding these events. **Exhibit 347** 4/8/20 IR DEFS 007191-93; **Exhibit 348** 4/8/20 Med. Request DEFS 007512; **Exhibit 349** 4/10/20 IR DEFS 007194-96; **Exhibit 350** 4/10/20 Med Request DEFS 007517.

201. Willis' detention ended when he was reclassified to Dorm 4 on 4/15/20. During this approximately 7-day period, he was offered access to staff processing and nursing, left the detention room for a meeting with RMO, and had a session with his PMHNP, among other basic needs. **Ex. 309**; **Ex. 346**; **Exhibit 351** 4/17/20 Letter DEFS 007970; **Ex. 338** at DEFS 009250-73; **Exhibit 352** 04/14/20 Pharm. Man./Psych Progress Note DEFS 007622-24.

202. Elsa was Dorm 4 Director at the time of Willis' reclassification. He was on orientation 4/16/20 to 4/22/20. **Ex. 8**, *Elsa* ¶ 42; **Ex. 309**.

203. On 7/8/20, staff required Willis to change into specialized clothing and placed him on detention status after discovering he had broken an exterior window of his room. Shaffer, Weber, and Elsa signed the incident report. Willis remained on detention status for about 36 hours, during which he processed with staff, and was provided reading materials and basic needs. **Exhibit 353** 7/8/20 IR 007200-02; **Ex. 309**; **Ex. 210** at 14480-85.

204. On 8/5/20, staff restrained Willis after he argued with and took an aggressive step toward Calderon. After Calderon started the restraint, Schwalbe came to assist. Willis resisted. Haun handed another staff member handcuffs but did not participate, as he had recently had surgery on his arm. Nursing monitored Willis. Weber was notified; he, Schwalbe, and Elsa signed the report.

Elsa implemented an SMP, approved by Weber. Willis remained on detention status for about 7 days, during which he was offered staff processing, processing with his counselor (Galovich), physical training, reading materials, and written assignments and school work, among other basic needs. **Exhibit 354** 8/5/20 IR DEFS 007203-5; **Ex. 295** at 151:7-160:4; **Exhibit 355** 8/6/20 SMP DEFS 007938-39; **Exhibit 356** SML DEFS 07940-7941; **Ex. 201** at 14530-14548.

205. On 8/14/20, Schwalbe and Elsa placed Willis on detention status after he refused to follow instructions outside and due to his chronic unsafe behaviors. Weber was notified; he, Schwalbe, and Elsa signed the incident report. Detention lasted about 26 hours, during which he processed with staff and did physical training, among other basic needs. **Exhibit 357** 8/14/20 IR DEFS 007206-7207; **Ex. 248** at 130:4-134:4; **Ex. 210** at DEFS 0014550-14555.

206. On 9/12/20, staff required Willis to change into specialized clothing. Schwalbe, Elsa, and Weber signed this report. **Exhibit 358** 9/12/20 IR DEFS 007208-7209.

207. On 11/7/20, staff required Willis to change into specialized clothing. Schwalbe, Elsa, Weber, and Mark Nelson signed the report. **Exhibit 359** 11/7/20 IR DEFS007210-12.

208. On 12/18/20, staff required Willis to change into specialized clothing and placed him on detention status after he punched a wall. Schwalbe physically managed his right hand and stopped when Willis quit hitting the wall. Weber was notified. He, Schwalbe, and Elsa signed the report. Detention lasted about 24 hours, during which nursing treated his hand and he received basic needs. **Exhibit 360** 12/18/20 IR DEFS 007213-15; **Ex. 68** at DEFS 014774-14777.

209. On 1/11/21, Elsa placed Willis on detention status after he kicked a filing cabinet, refused staff directions, used profanity and yelled at staff. Shaffer participated in escorting him to the detention room. Weber was notified; he, Shaffer, and Elsa signed the report. Willis remained on detention for about 28 hours. **Exhibit 361** 1/11/21 IR DEFS 007216-17; **Ex. 309**

210. Willis discharged from WBS on 2/19/21. **Exhibit 362** *Order of Release* DEFS 006709-6711.

211. He attended CHS, earning 9th, 10th, and 11th grade credits. **Exhibit 363** Willis Depo. (CONFIDENTIAL) 77:21-78:20, 83:12-24; **Exhibit 364** *CHS Transcript* DEFS 006909 (Depo. Ex. 177). He engaged in exercise in both school PE and physical training on the dorm, which he testified occurred “a lot” **Ex. 363** (CONFIDENTIAL) at 86:23-88:12.

[REDACTED]

213. Willis agreed orange clothing visually made a student stand out from others. **Exhibit 365** Willis Depo. (REDACTED).152:2-9. He also testified orange clothing did not mean he could not go to school; that there were times he attended school in orange clothing; that there were times he participated in therapy groups in orange clothing; and that there were times he participated in group physical training in orange clothing. **Id.** 154:3-16.

214. Willis testified he could only remember Elsa restraining him “just once [] for sure,” or possibly twice, although he could not recall any details about the possible second restraint. **Id.** 119:11-23. He testified she did not “slam” him against anything but used a tight grip on his wrist. **Id.** 115:9-118:19

215. Willis testified Elsa and Shaffer required him to spend additional time in “solitary confinement” when he expressed suicidal ideation, saying that “if that’s the way you feel, then we’ll just keep you in here for your own safety.” **Id.** 150:5-18.

216. Willis testified Shaffer was “aggressive” when he restrained him and that he would squeeze him hard during restraints but would stop when Willis stopped whatever he was doing. **Id.** at 122:6-125:13-24. He gave the example that at some point during a restraint, Shaffer gave him a bloody nose. **Id.** at 122:6-124:25. He testified a nurse “came to see [him] after that” and “cleaned [his] nose up” about an hour later. **Id.** 124:13-22, 148:5-149:5.

217. Willis described another instance in which Shaffer handcuffed him so tight he believed his hand was broken. **Id.** 145:2-148:25. He testified he asked to see the nurse, who came and examined his hand. **Id.** 147:14-148:5. There were “marks” on his hand, but the nurse told him it wasn’t broken. **Id.** Apart from the nosebleed and marks on his arm, Willis testified that he did not receive any other injuries from Shaffer. **Id.** 126:7-9.

218. Willis testified Schwalbe was also “aggressive” when he restrained him. **Id.** 120:1-121:122:5. He explained Schwalbe would grab his bicep “really hard” and squeeze it “really hard” and would “grab [his] head and . . . leave it on the ground.” **Id.** 120:1-5, 121:6-19. When asked if Schwalbe ever gave him any injuries, he testified that he had marks on his biceps and shoulders from him that lasted a day or two and that nursing examined. **Id.** 121:20-122:5. Willis also testified Schwalbe told him he was ok because the injury did not impact his heart on the occasion Shaffer allegedly gave him a nosebleed. **Id.** 149:1-16.

219. Willis testified Haun restrained him “at least once” at an unknown time “probably” on Dorm 4. **Id.** 131:14-132:23. He did not recall any details of Mr. Haun restraining him other than that he was “aggressive,” and that he grabbed his wrists and “put his . . . his fingers in my veins.” **Id.** p.131:14-132:23.

220. Willis testified that a security guard named Mr. Nelson restrained him “a couple of times” or five to eight times. **Id.** p.126:10-130:14.

221. Willis was unable to differentiate between Mark Nelson and Mike Nelson, other than by their roles in security versus dorm staff. **Id.** 126:10-130:14. Mark Nelson worked solely in RMO during the time of Willis' placements at WBS. **Ex. 331** at.22:6-14. Mike Nelson worked in RMO from about February 2020 until May 1, 2020. **Ex. 171** *Mike Nelson* ¶ 6. He worked on Dorm 1 from May 1, 2020 until late July 2021. **Id.** Willis was not on Dorm 1 at the time. **Id.** ¶ 8.

222. Willis described security guard Nelson as "very aggressive," and testified he "would squeeze me." **Ex. 365** 126:10--130:14. He only specifically recalled one restraint, during which security guard Nelson grabbed his wrists "really hard" and placed hand cuffs on him "very hard" for 30-45 minutes, leaving marks. **Id.** 126:10-130:14. He did not recall any other details of that incident. **Id.** 126:10-130:14. Other than that restraint, Willis recalled only that security guard Nelson mainly assisted other staff once he was already being restrained. **Id.** p.126:10-130:14

223. Regarding the dorm staff Nelson, Willis testified that Dorm 4 staff Nelson assisted with restraining him 10-15 times. **Id.** 127:13-128:12, 130:15-131:13. He did not recall receiving any injuries from dorm staff Nelson. **Id.**

224. At WBS, Willis did not request any accommodations for any mental health diagnoses, nor was it obvious he needed an accommodation. **Ex. 2**, *Weber Aff.*, ¶ 41; **Ex. 133** *Turner Aff.*, ¶ 9 ; **Ex. 8**, *Elsa Aff.* ¶ 13; **Ex. 19**, *Del Aff.*, ¶19.

IX. Statement of Facts Concerning Plaintiff Cranford

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] the court ordered a change in Cranford's placement to WBS. [REDACTED]

[REDACTED]

227. On July 24, 2019, Cranford was admitted to WBS and placed on Dorm 4. **Exhibit 378** *Cranford Status Info. Sheet* DEFS 006352; **Ex. 367** at pp. 158:23-159:2.

228. [REDACTED]

[REDACTED]

229. [REDACTED]

[REDACTED]

230. Cranford believes he had a disability at WBS because he was overweight. He believes he was discriminated against because his meal portions were cut. He also feels that he was pushed harder in physical training. **Ex. 367** at 219:12-221:16.

231. On July 25, 2019, Dr. Thurston conducted an intake physical exam of Cranford. He assessed Cranford obese and ordered three-quarter meal portions. September 19, 2019, Dr. Thurston gave orders to reduce Cranford to one-half meal portions, based on lipid panel results. January 9, 2020, Dr. Thurston returned Cranford to three-quarter meal portions. WBS complied with each order. **Exhibit 370** 7.25.19 *Physician Encounter* DEFS 006433; **Ex. 248** *Elsa Depo.* 174:19-175:19; **Exhibit 371** *Dahlke/Thurston notes* DEFS 006388; **Exhibit 372** *Lab Results* DEFS 006490–6492; **Exhibit 373** 9/19/19 *Dahlke/Elsa Email* DEFS 045656; **Exhibit 374** 9/19/19 *Elsa Email* DEFS 028356; **Exhibit 375** 1/9/20 *Physician Encounter* DEFS 006434; **Exhibit 376** 9/23/19-1/10/20 *D4 Logbook* DEFS 013977-14132 at DEFS 014130; **Ex. 8**, *Elsa Aff.* ¶ 15.

232. Cranford believes at WBS he had mental disabilities, based on diagnoses he believes had received before he entered WBS, including depression, anxiety, PTSD, and severe trauma. **Ex. 367** at 129:8-133:25, 219:12-223:2. He testified he would not say WBS staff discriminated against him based on these diagnoses. **Id.** 222:12-223:8. He did not request any accommodation for his mental health diagnoses or alleged mental health disabilities, nor was it obvious he needed any. **Ex. 2**, *Weber Aff.* ¶ 32; **Ex. 8**, *Elsa Aff.* ¶ 12, **Ex. 34**, *Schwalbe Aff.* ¶ 9.

233. Only one incident report was prepared about Cranford wherein staff reported he engaged in self-harm by rubbing his hand against a screen. Nurse Hansen (fka Fisher) examined him and cleaned his superficial scrapes. **Exhibit 377** 7/25/19 IR DEFS 006300-6301; **Ex. 2**, *Weber Aff.* ¶ 33.

234. In Cranford's view, being a WBS resident is "solitary confinement." However, he bases his claim about "solitary confinement" on detention status, not the fact that he considers WBS to be "solitary confinement." **Ex. 367** at 241:21-242:4, 242:16-243:13; 245:12-22, 247:8-248:4, 248:23-249:10, 250:21-251:6, 251:24-252:2.

235. Although Cranford testified he was placed on detention status, he cannot identify any specific instance. Cranford testified he was never on "detention status" for as long as a month and a half. **Id.** at 240:15-241:12. He testified that at times while on detention status, he went to school or was given a computer to do schoolwork in the detention room. **Id.** at 252:3-21, 255:18-256:20.

236. Cranford testified he was placed on "suicide watch" at least four times, which he defined to mean he was placed in a room so he would not harm himself. **Id.** at 288:10-290:7.

237. At times, Cranford was placed on OCS. **Ex. 378** *Status Info. Sheet* DEFS 006352. He testified on OCS, "[t]here's little things that get changed. . . . you are still out in the main area," still did group work, and "as far as day-to-day living, it stayed pretty much the same." **Ex. 367** at

197:17-199:4.

238. Cranford testified he was restrained multiple times but cannot identify any specific instances. However, he states the only restraint staff used on him was “taking me down,” which he explained meant “take me down to the ground” from a standing position if he got too aggressive or was deemed too aggressive. He testified he “would fight them on it, of course. And that’s kind of where the restraining would come in, preventing me from fighting them.” **Id.** at 258:9-260:1. He testified he would be restrained if he “exploded,” but that would depend “on the situation and how much I exploded or in what ways I exploded.” **Id.** at 235:15-236:1, 258:19-23. Cranford does not know how many times he was “taken down” by WBS staff. **Id.** at 259:14-16. He testified he did not experience any other type of restraint at WBS. **Id.** at 259:11-13. He alleges this manner of restraint is improper because he “should never have gone to the ground,” because (and despite testifying that “he would fight them [] of course”) “[a]ll it would take to restrain me is holding me.” **Id.** at 310:4-14.

239. Although Cranford claims Mark Nelson restrained him, he cannot describe him and cannot identify a specific instance of Mark Nelson tackling him. **Id.** at 309:2-9. He does not know how many times Mark Nelson tackled him. **Id.**

240. Although Cranford testified Shaffer restrained him, he does not know how many times and he does not remember the circumstances. **Id.** at 308:18-309:1.

241. Although Cranford testified Schwalbe restrained him, he does not know how many times that occurred and can describe no particular instance. He testified that in his view, Schwalbe did it “to make sure that I wasn’t doing whatever it was that I was doing.” **Id.** at 307:2-13.

242. Cranford testified Elsa did not restrain him. **Id.** at 309:10-310:3.

243. There is no evidence Weber ever witnessed or was involved in any restraint of Cranford.

244. Cranford testified he tried to run away from WBS once when running laps on a track with his dorm. He does not know the identity of any students or staff present and does not recall when this happened. **Id.** at 263:21-264:17, 264:23-265:1, 265:25-266:3, 279:24-280:5.

245. He testified two security people in one side-by-side chased him, that he was hit in the back by “beanbag gun” and fell, with the tire of the side-by-side running over his right leg. **Id.** at 266:4-25, 276: 3-16, 277:5-17, 281:17-282:8. However, he cannot identify the people who were in the side-by-side. **Id.** 266:13-14; 277:2-19, 278:17-279:1. There is no evidence any of the Defendants ever operated a side-by-side or employed a bean bag weapon.

246. Cranford states he made two suicide attempts at WBS. In the first, he states he “tried to hang himself” with a sheet or “tried to, like, strangle myself with it.” He testified he stopped; then staff entered and stopped him from doing anything further. He does not recall who was involved. **Id.** at 293:23-294:3, 295:4-296:16.

247. He testified the other time, he hit his head against a wall and Schwalbe entered the room and bear-hugged him, stopping him from continued self-harm. He testified he “fought” Schwalbe and “we kind of wrestled towards the ground.” He further testified, “I tried to fight him on it, but he held me to the ground.” **Id.** at 293:23-294:3, 300:2-301:25.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

250. On 1/12/21, WBS discharged Cranford. **Ex. 378** DEFS 006352; **Ex. 367** at 177:2335.

III. Standard of Review

The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” F.R.C.P. 56(a). Typically, the party moving for summary judgment bears the initial burden. *Tesone v. Empire Marketing Strategies*, 942 F.3d 979, 994 (10th Cir. 2019).

But, “[w]hen a defendant asserts qualified immunity at the summary judgment stage, it is the plaintiff’s burden to prove (1) the defendant violated his constitutional rights; and (2) the law was clearly established at the time of the alleged violation.” *Soza v. Demisch*, 13 F.4th 1094, 1099 (10th Cir. 2021). Regarding the second prong, “[f]or the law to be ‘clearly established,’ there ordinarily must be a Supreme Court or Tenth Circuit opinion on point, or the clearly established weight of authority from other circuits must point in one direction.” *Pompeo v. Bd. of Regents of the Univ. of New Mexico*, 852 F.3d 973, 981 (10th Cir. 2017). An on-point decision means the precedent is “particularized to the facts,” meaning that it “involves materially similar facts” to the case at hand. *Apodaca v. Raemisch*, 864 F.3d 1071, 1076 (10th Cir. 2017). “If the plaintiff fails to satisfy either part of the two-part inquiry, the court must grant the defendant qualified immunity.” *Medina v. Cram*, 252 F.3d 1124, 1128 (10th Cir. 2001).

IV. Argument

a. The Prison Litigation Reform Act (“PLRA”) bars Karn and D.H.’s claims.

i. Karn and D.H. failed to administratively exhaust their claims.

Under the PLRA, “[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other

correctional facility until such administrative remedies as are available are exhausted.” 42 U.S.C. § 1997e(a). “Exhaustion under the PLRA is ‘mandatory’ and ‘unexhausted claims cannot be brought in court.’” *Estrada v. Smart*, 107 F.4th 1254, 1259 (10th Cir. 2024).

When this case was filed on February 26, 2024, Karn was in the custody of WDOC, serving a life sentence at WSP. **Ex. 16**, *Abbott Aff.* ¶ 3; ECF No. 1.

D.H. joined later. The Tenth Circuit applies the tender rule to determine when a new claim was brought for purposes of PLRA exhaustion. *May v. Segovia*, 929 F.3d 1223, 1232-33 (10th Cir. 2019). On July 30, 2024, Plaintiffs’ counsel filed a motion seeking leave to file a Second Amended Complaint to add D.H. as a party. (ECF No. 41, 42, 42-1, 42-1). That day, the Court granted the motion. (ECF No. 43). D.H. formally joined on July 31, 2024. (ECF No. 48). On July 30 and 31, 2024, D.H. resided at the Wyoming Regional Juvenile Detention Center, as required by a court order in his juvenile delinquency case.¹⁶ **Ex. 17** *Holbrook Aff.* at ¶¶ 3-4.

The fact that Karn and D.H.’s lawsuit concerns conditions at facilities different from the places they were incarcerated when they filed or joined this lawsuit is immaterial, because the PLRA’s plain language in § 1997(e)(a) focuses solely on the plaintiff’s status as a “prisoner” on the date his lawsuit is filed. *See, e.g., Peoples v. Gilman*, 109 F. App’x 381, 382-84 (10th Cir. 2004), overruled in part on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007)) (affirming dismissal ruling based in part on plaintiff’s failure to exhaust administrative remedies, where the plaintiff was a prisoner in the custody of the Colorado Department of Corrections when he filed suit, and the suit concerned prison conditions as a pretrial detainee at Denver County Jail); *Prado v. Hindes*, Case No. 2:19-CV-3 DBB, 2020 WL 5531257, at *3-*4 (D. Utah. Sept. 15, 2020).

Moreover, all of Karn and D.H.’s claims about alleged events at WBS and alleged conduct by

¹⁶ The PLRA defines “prisoner” to include a juvenile adjudicated delinquent. 42 U.S.C. § 1997e(h).

WBS employees address “prison conditions.” “[T]he PLRA’s exhaustion requirement applies to all inmate suits about prison life, whether they involve general circumstances or particular episodes, and whether they allege excessive force or some other wrong.”¹⁷ *Porter v. Nussle*, 534 U.S. 516, 532 (2002). The PLRA’s exhaustion requirement extends to ADA and Rehabilitation Act claims. *See Smith v. Drawbridge*, 764 F. App’x 812, 814 (10th Cir. 2019) (ADA); *Rigler v. Lampert*, 248 F. Supp. 3d 1224, 1235-35 (D. Wyo. 2017) (ADA and Rehabilitation Act).

“[I]t is the prison’s requirements, and not the PLRA, that define the boundaries of proper exhaustion.” *Estrada*, 107 F.4th at 1268 (citing *Jones*, 549 U.S. at 218). “To exhaust administrative remedies an inmate must properly comply with grievance procedures; substantial compliance is insufficient.” *Fields v. Oklahoma State Penitentiary*, 511 F.3d 1109, 1112 (10th Cir. 2007) (citing *Jernigan v. Stuchell*, 304 F.3d 1030, 1032 (10th Cir. 2002)).

WBS maintained an operational grievance procedure that was available to Karn and D.H. *See supra*, ¶¶ 32-36. Indeed, two Plaintiffs (D.H. and Willis) understood the grievance process was accessible and filed grievances about issues at WBS. *Id.* ¶¶ 37, 41. Under the WBS grievance procedure, if a resident has a grievance that was not resolved by discussion with staff, the resident “shall complete a grievance form and submit it to the Dormitory Director, or give it to staff to give to the Dormitory Director, or place in the comment box.” *Id.* ¶ 34. After that, efforts to informally resolve the grievance proceed. *Id.*

Karn never submitted a grievance at WBS, nor did WBS receive a grievance submitted on his behalf from his mother or stepfather. *Id.* ¶¶ 39-40. Thus, Karn failed to exhaust administrative remedies.

¹⁷ Under 18 U.S.C.A. § 3626(g)(2), “the term ‘civil action with respect to prison conditions’ means any civil proceeding arising under Federal law with respect to the conditions of confinement or the effects of actions by government officials on the lives of persons confined in prison.” The Tenth Circuit relies on that definition within § 3626(g)(2) to interpret “prison conditions” under 42 U.S.C. § 1997e(a). *Estrada*, 107 F.4th at 1264.

D.H. submitted one grievance complaining about one staff member (Sample) sending him to bed early. *Id.* ¶ 41. Without question, the grievance does not resemble or cover Claims 2–6. As for Claim 1, predicated on excessive “solitary confinement,” D.H.’s single grievance is insufficient to establish exhaustion because it is a categorially different complaint than his solitary confinement claim. The grievance concerned a single incident in which he was sent to bed early. D.H.’s Claim 1 covers the nearly 4-month period that he was at WBS, including events that occurred over 40 days after he signed the grievance on June 2, 2024. “A grievance ‘cannot exhaust administrative remedies for claims based on events that have not yet occurred.’” *See Barnes v. Allred*, 482 F. Appx. 308, 312 (10th Cir. 2012). Indeed, D.H. pleaded he was “punished with solitary confinement” *after* May 6, 2024 and was “in uninterrupted isolation” from May 6, 2024 to July 15, 2024 (ECF No. 89 at ¶¶ 256, 258). He testified he thought he was on detention status from May 6th until July 15th. **Ex. 18**, *D.H. Depo.* pp. 180:11-181:3.

Moreover, by his signature on the second page, D.H. indicated the grievance was resolved and did not pursue subsequent steps in the process. “Taking some, but not all, of the steps in the grievance process does not constitute proper exhaustion; ‘[a]n inmate who begins the grievance process but does not complete it is barred from pursuing a § 1983 claim under PLRA for failure to exhaust his administrative remedies.’” *Chapman v. Lampert*, 555 F. App’x 758, 761 (10th Cir. 2014). Consequently, D.H. did not exhaust the grievance process, as required by the PLRA.

ii. D.H.’s cannot show physical injury, barring his compensatory damages claims.

Under 42 U.S.C. § 1997e(e), an inmate’s claim for damages is barred “for mental or emotional injury suffered while in custody without a prior showing of physical injury.”

In *Johnson v. Reyna*, the Tenth Circuit declined to decide if a de minimis injury or physical pain alone can satisfy § 1997e(e). 57 F.4th 769, 777 (10th Cir. 2023). Yet the court recognized that

“so far, all seven circuits to address the issue have required plaintiffs to show more than a de minimis physical injury to recover for a mental or emotional injury.” *Id.* at 776-77 (citing cases). Subsequently, in *White v. United States*, the Tenth Circuit assumed without deciding that the more-than-de-minimis standard applies. *White*, No. 21-6007, 2024 WL 3309752, at *7-*8 (10th Cir. July 5, 2024). Drawing from *Johnson*, *White* described the applicable standard for assessing a more-than-de-minimis injury requirement:

Courts that require more than a de minimis injury to satisfy § 1997e(e)’s physical-injury requirement look to the duration and intensity of the injury and whether the plaintiff required medical treatment to decide whether the injury is more than de minimis. These courts consider some injuries de minimis, such as “a sore, bruised ear lasting for three days,” or a few days of an upset stomach, minor cuts, and itchiness. And they consider as de minimis injuries some ailments like headaches, cramps, nosebleeds, dizziness, and weight loss. But when an injury lasts longer, causes more pain, and requires medical treatment, courts are more likely to find that the physical injury supports a claim for mental or emotional injuries under § 1997e(e).

White, 2024 WL 3309752, at *9 (quoting *Johnson*, 57 F.4th at 777).

The video evidence shows D.H. did not sustain an injury at all. Although D.H. testified Haun shoved him so hard he struggled to breathe and was gasping for air, the video evidence shows that after Haun used his arm to move D.H. out of the doorway, D.H. laid down and laughed. *See, supra* ¶¶ 45, 172. Given the footage blatantly contradicts his testimony, he cannot create a material factual dispute. *Scott v. Harris*, 550 U.S. 372, 380 (2007) (“When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment”); *see also Carabajal v. City of Cheyenne, Wyoming*, 847 F.3d 1203, 1207 (10th Cir. 2017).

Even accepting D.H.’s account, he sustained de minimis physical harm. In *Johnson*, the Tenth Circuit cited *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997), as finding “a sore, bruised

ear lasting for three days" as a model de minimis injury. *Johnson*, 57 F.4th at 777. D.H.'s alleged three days of chest pain is insufficient to show a physical injury under § 1997e(e).

b. Qualified Immunity bars Plaintiffs' § 1983 claims.

i. Section 1983 Liability, Generally

"In order for liability to arise under § 1983, a defendant's *direct personal responsibility* for the claimed deprivation of a constitutional right must be established." *Porro v. Barnes*, 624 F.3d 1322, 1327 (10th Cir. 2010) (emphasis in original). Thus, a supervisor is not vicariously liable for his employees' acts. *George ex rel. Bradshaw v. Beaver Cty. by & through Beaver Cty. Bd. of Commr's*, 32 F.4th 1246, 1255 (10th Cir. 2022). Nor is "mere presence" at the scene of a sufficient to establish a constitutional. *Porro*, 624 F.3d at 1327 (citing *Novitsky v. City of Aurora*, 491 F.3d 1244, 1254 (10th Cir. 2007)). Rather, a "§ 1983 claim requires 'personal involvement in the alleged constitutional violation.'" *Stewart v. Beach*, 701 F.3d 1322, 1328 (10th Cir. 2012). Accordingly, to "establish a violation of § 1983 by a supervisor, as with everyone else [] the plaintiff must establish a deliberate, intentional act on the part of the defendant to violate the plaintiff's legal rights." *Porro*, 624 F.3d at 1327-28 (cleaned up). Further, an alleged inadequacy of training may provide a basis for § 1983 liability only when "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation of constitutional rights" that policymakers "can reasonably be said to have been deliberately indifferent to the need." *Schneider v. City of Grand Junction Police Dep't.*, 717 F.3d 760 (10th Cir. 2013).

ii. First Claim for Relief: Isolation Resulting in Deprivation of Basic Human Needs¹⁸

The movants for this claim are: 1) Weber as to all Plaintiffs; 2) Elsa as to Karn, Tolar, Willis, and Cranford; 3) Turner as to Tolar and Willis; 4) Adams as to Karn and D.H.; 5) Mike

¹⁸ Plaintiffs complain of "isolation" and/or "solitary confinement." Defendants reject that characterization and use those terms only in reference to Plaintiffs' allegations.

Nelson as to Chivers-King; 6) Shaffer as to Willis; 7) Schwalbe as to Tolar and Cranford; 8) Coronado as to D.H.; and 9) Del as to D.H. (the “Count I Movants”).

Plaintiffs style their first claim as arising under the Eighth and Fourteenth Amendments. However, Eight Amendment claims generally arise only for individuals who have been convicted. *Colbruno v. Kessler*, 928 F.3d 1155, 1162 (10th Cir. 2019). By contrast, the Fourteenth Amendment applies to unconvicted detainees. *Id.* Plaintiffs were placed at WBS as a result of being adjudicated delinquent. Proceedings under Wyoming’s Juvenile Justice Act are not criminal, and “[n]o order or decree” under it “shall be deemed a conviction of a crime.” *JP v. State*, 2022 WY 94, ¶ 15, 514 P.3d 785 (Wyo. 2022); Wyo. Stat. Ann. § 14-6-238. Thus, Plaintiffs’ First Claim for Relief is analyzed under the Fourteenth Amendment. *See Blackmon v. Sutton*, 734 F.3d 1237 (10th Cir. 2013) (analyzing juvenile detainee’s Section 1983 claims under 14th Amendment).

That said, the 8th Amendment provides the “benchmark” under which detainees’ conditions of confinement are measured. *United States v. Buntyn*, 104 F.4th 805, 809 fn.3 (10th Cir. 2024); *Routt v. Howard*, 764 Fed. Appx 762, 770 (10th Cir.2019); *Ledbetter v. City of Topeka, Kan.*, 318 F.3d 1183, 1188 (10th Cir. 2003). The 8th Amendment requires humane conditions, including basic necessities of food, clothing, shelter, medical care, and reasonable measures to guarantee safety. *Craig v. Eberly*, 164 F.3d 490, 495 (10th Cir. 1998). Only deprivations denying those minimal civilized necessities may amount to a constitutional violation. *Id.* Duration is a relevant factor:

a “filthy, overcrowded cell and a diet of ‘grue’ might be tolerable for a few days and intolerably cruel for weeks or months.” *Hutto v. Finney*, 437 U.S. 678, 686–87, 98 S.Ct. 2565, 2571, 57 L.Ed.2d 522 (1978). Courts have repeatedly held that similar and far worse conditions fail to state a claim because of the brief nature of the incarceration. *See, e.g., Whitnack v. Douglas County*, 16 F.3d 954, 958 (8th Cir.1994) (deplorably filthy and patently offensive cell with excrement and vomit not unconstitutional because conditions lasted only for 24 hours); *White v. Nix*, 7 F.3d 120, 121 (8th Cir.1993) (eleven day stay in unsanitary cell not unconstitutional because of relative brevity of stay and availability of cleaning supplies); *Harris v. Fleming*, 839 F.2d 1232, 1235–36 (7th Cir.1988) (five day stay in “filthy, roach-

infested cell” not unconstitutional); *see also Ogbolu v. McLemore*, 1997 WL 49449, at *2 (10th Cir. Feb.7, 1997) (cold, wet, drafty, and unsanitary solitary cell for two days does not violate Eighth Amendment).

Barney v. Pulsipher, 143 F.3d 1299, 1311–12 (10th Cir. 1998).

“[C]onstitutionality under a due process analysis of the nature or duration of pretrial detention turns on whether such detention amounts to ‘punishment’ in the constitutional sense.” *Littlefield v. Deland*, 641 F.2d 729, 731 (10th Cir. 1981). Punishment “in the constitutional sense,” is not mere “restrictions and conditions of the detention.” *Bell v. Wolfish*, 441 U.S. 520, 536 (1979). To determine whether a condition amounts to unconstitutional punishment, courts assess “whether an ‘expressed intent to punish on the part of detention facility officials exists. [] If so, liability may attach.” *Blackmon*, 734 F.3d at 1241. The record shows that none of the Count I Movants expressed an intent to punish.

Absent that, the inquiry turns on whether conditions were reasonably related to a legitimate interest. *Bell*, 441 U.S. at 539. Such interests include those “that stem from [the] need to manage the facility in which the individual is detained.” *Id.* at 540. Conditions reasonably related to the institution's interest in maintaining jail security do not constitute unconstitutional punishment, even if uncomfortable. *Id.*; *see also Peoples v. CCA Det. Ctrs.*, 422 F.3d 1090, 1106 (10th Cir. 2005) (segregation incident to managerial needs or due to “threats to safety and security,” such as substantiated escape threats, are non-punitive); *Blackmon*, 734 F.3d at 1242 (identifying restraining detainee from self-harm as legitimate interest); *Colbruno*, 928 F.3d at 1166 (chaining plaintiff to hospital bed served legitimate purpose in light of apparent risk he posed to himself).

This standard does not permit a court to impose “its idea of how best to operate a detention facility.” *Littlefield*, 641 F.2d at 731. “Such considerations are peculiarly within the province and professional expertise of corrections officials, and, in the absence of substantial evidence in the

record to indicate [they] have exaggerated their response to these considerations, courts should ordinarily defer to their expert judgment.” *Bell*, 441 U.S. at 540 fn.23. Thus, there is no rigid set of interests that may justify conditions. *Id.* at 540.

Plaintiffs cannot meet their heavy burden in response to the Count I Movants’ assertion of qualified immunity. First, Plaintiffs cannot establish the direct personal involvement of the Count I Movants in many of the alleged incidents underlying their claims. Section 1983 liability cannot rest on generalized supervisory responsibility or collective attribution; rather, Plaintiffs must identify specific conduct by each individual defendant that allegedly violated clearly established constitutional rights. Their inability to do so is independently fatal to many of their claims. Moreover, the record establishes that every instance of claimed “isolation” served a legitimate purpose and was not excessive in relation to that purpose. *See, supra* ¶¶ 46-250. Managing and preventing violence, self-harm, property damage, runaways and the like are undoubtedly legitimate purposes, as are public health quarantines and standard orientation periods. No clearly established law deems those purposes illegitimate, nor establishes that the conditions and restrictions imposed rise to the level of constitutional violations.

iii. Second Claim for Relief: Unlawful Use of Restraints and Excessive Force

Generally, Plaintiffs allege various individual defendants violated their Fourteenth Amendment rights by subjecting them to excessive force. (ECF 89 ¶¶ 350-365). The movants for summary judgment on this Claim are: 1) Weber as to all Plaintiffs; 2) Elsa as to Tolar, Willis, and Cranford; 3) Mike Nelson as to Chivers-King and Willis; 4) Mark Nelson as to Chivers-King, Karn, Willis, and Cranford; 5) Shaffer as to Chivers-King, Karn, Willis, and Cranford; 6) Schwalbe as to Plaintiffs Tolar, Karn, Willis, and Cranford; 7) Haun as to D.H. and Willis; and 8) Del to Chivers-King and D.H. (the “Count II Movants”). Plaintiffs cannot meet their burden in response

to Defendants' assertion of qualified immunity.

The Fourteenth Amendment protects a “pretrial detainee from the use of excessive force that amounts to punishment.” *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015). As such, when reviewing an excessive force claim, the court must determine whether the complained of conduct “is imposed for the purpose of punishment or whether it is but an incident of some other legitimate governmental purpose.” *Bell*, 441 U.S. at 538. An excessive force due process claim can be shown with “only objective evidence that the challenged governmental action is not rationally related to a legitimate governmental objective or that it is excessive in relation to that purpose.” *Kingsley*, 576 U.S. at 398.

Objective reasonableness depends on the “facts and circumstances of each particular case” and should “account[] for the legitimate interests that stem from the government’s need to manage the facility in which the individual is detained, appropriately deferring to policies and practices that in the judgment of jail officials are needed to preserve internal order and discipline and to maintain institutional security.” *Id.* Courts should not make this determination “with the 20/20 vision of hindsight,” but rather “from the perspective of a reasonable officer on the scene, including what the officer knew at the time.” *Id.* The objective reasonableness standard “protects an officer who acts in good faith,” and who is “often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving.” *Id.* at 399. The Tenth Circuit considers the nonexhaustive factors set out in *Kingsley*, including:

- 1) the relationship between the need for the use of force and the amount of force used;
- 2) the extent of the plaintiff’s injury;
- 3) any effort made by the officer to temper or to limit the amount of force used;
- 4) the severity of the security problem at issue;
- 5) the threat reasonably perceived by the officer; and
- 6) whether the plaintiff was actively resisting.

Wise v. Caffey, 72 F.4th 1199, 1206 (10th Cir. 2023) (quoting *Kingsley*, 576 U.S. at 397). Regarding

the injury factor, “a claim of excessive force requires some actual injury that is not de minimis, be it physical or emotional.” *Cortez v. McCauley*, 478 F.3d 1108, 1129 (10th Cir. 2007); accord *Fisher v. City of Las Cruces*, 584 F.3d 888, 898 (10th Cir. 2009) (requiring non-de minimis injury in excessive force handcuffing cases and collecting cases).

Plaintiffs cannot meet their heavy burden in response to the Count II Movants’ assertion of qualified immunity. First, Plaintiffs cannot establish the direct personal involvement of the Count II Movants in many of the alleged incidents underlying their claims. Moreover, the record establishes that every instance in which any Count II Movant used any force, they acted reasonably and in good faith, made efforts to limit the amount of force used, there was legitimate need for the force used, that no Count II Movant inflicted anything more than a de minimis injury on any Plaintiff (if at all), and that, on many occasions, Plaintiffs actively resisted. *See, supra* ¶¶ 46-250. No authority clearly establishes that the Count II Movants’ conduct was unconstitutional in these circumstances.

iv. Third Claim for Relief: Deliberate Indifference to Medical Needs

The movants for summary judgment on this claim are: 1) Weber as to Karn and Tolar; 2) Elsa Olson as to Tolar and Willis; 3) Adams as to D.H.; 4) Mike Nelson as to Chivers-King; 5) Shaffer as to Plaintiffs Karn and Willis; 6) Schwalbe as to Karn, Tolar, Willis, and Cranford; and 7) McGinty as to Karn (the “Count III Movants”). Plaintiffs cannot meet their burden in response to Defendants’ assertion of qualified immunity.

Pretrial detainees are afforded the same protection for medical attention as convicted inmates. *George ex rel. Bradshaw*, 32 F.4th at 1255. A plaintiff must show “deliberate indifference to serious medical needs.” *Clark v. Colbert*, 895 F.3d 1258, 1267 (10th Cir. 2018). This standard includes objective and subjective components. *Id.*

A medical need is objectively serious if it “has been diagnosed by a physician as mandating treatment” or “is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.” *Id.* A delay in medical care only amounts to a constitutional violation where the plaintiff can show the delay resulted in substantial harm. *Requena v. Roberts*, 893 F.3d 1195, 1216 (10th Cir. 2018). “The substantial harm requirement may be satisfied by lifelong handicap, permanent loss, or considerable pain.” *Id.*

“As for the subjective component, only ‘a prison official’ who ‘knows of and disregards an excessive risk to inmate health or safety’ acts with deliberate indifference.” *Clark*, 895 F.3d at 1267. This requires a plaintiff to show both that the official was aware of facts from which the inference could be drawn that a substantial risk of serious harm existed, and that the official actually drew that inference. *Strain v. Regalado*, 977 F.3d 984, 990 (10th Cir. 2020). With respect to supervisors, the state of mind of a supervisor “can be no less than the *mens rea* required of any of his subordinates [] to commit the underlying constitutional violation.” *Cox v Glanz*, 800 F.3d 1231, 1249 (10th Cir. 2015) (cleaned up). Moreover, “an individual ‘who merely disagrees with a diagnosis or a prescribed course of treatment does not state a constitutional violation.’” *Strain*, 977 F.3d at 995. Indeed, “a misdiagnosis, even if rising to the level of medical malpractice, is simply insufficient [] to satisfy the subjective component of a deliberate indifference claim.” *Id.*

Plaintiffs cannot meet their heavy burden in response to the Count III Movants’ assertion of qualified immunity. First, Plaintiffs cannot establish that that they did not receive medical care for any objectively serious medical condition, let alone that any of the Count III Movants had direct personal involvement in denying medical care. Nor can they establish that any of Count III Movants acted with deliberate indifference to any Plaintiff’s health and safety. Finally, no clearly established law prohibited any of the Count III Movants conduct with respect to any of Plaintiffs’

medical needs.

v. Fourth Claim for Relief: Fourteenth Amendment Due Process

Plaintiffs allege Weber denied them due process with respect to the imposition and duration of “solitary confinement.” Chivers-King and D.H. allege the same for Del. (ECF 89 ¶¶ 382-395). Procedural due process protections are only triggered if restrictions amount to punishment. *Hubbard v. Nestor*, 830 Fed. App’x 574, 583 (10th Cir. 2020). As explained above, Plaintiffs cannot meet their burden to show that the conditions of Plaintiffs’ confinement were punishment under clearly established law and this claim fails for the same reasons as the First Claim for Relief.

c. No Americans with Disabilities Act (“ADA”) or Rehabilitation Act Liability

Title II of the ADA prohibits public entities from discriminating against qualified individuals with disabilities in the provision of public programs, activities, or services. 42 U.S.C. § 12132. Section 504 of the Rehabilitation Act similarly prohibits discrimination by recipients of federal funds. 29 U.S.C. § 794(a). WBS, DFS, and Weber in his official capacity (“State Defendants”) do not dispute WBS is a public entity under the ADA or that it receives federal funds.

Eleventh Amendment Immunity bars Plaintiffs’ ADA claims. Courts apply a three-step framework for evaluating whether immunity applies to a Title II damages claim: (1) whether the alleged conduct violates Title II; (2) if so, whether it also violates the 14th Amendment; and (3) if not, whether Congress’s abrogation of immunity is nevertheless valid. *Brooks v. Colo. Dep’t of Corr.*, 12 F.4th 1160, 1168 (10th Cir. 2021). The plaintiff bears the burden of showing immunity has been waived. *Havens v. Colo. Dep’t of Corr.*, 897 F.3d 1250, 1260-61 (10th Cir. 2018). Defendants are immune at step one.¹⁹

¹⁹ The claims also fail at steps two and three, but because step one is dispositive, Defendants do not address them.

Title II requires a plaintiff to show: 1) he is a qualified individual with a disability;²⁰ 2) he was either excluded from participation in or denied the benefits of a public entity's services, programs or activities, or was otherwise discriminated against; and 3) such exclusion, denial, or discrimination was by reason of his disability. *Brooks*, 12 F.4th at 1167. Compensatory damages also require intentional discrimination. *Hans v. Bd. of Shawnee Cty. Commr's*, 775 Fed. App'x 953, 956 (10th Cir. 2019) (unpublished); see *Hamer v. City of Trinidad*, 924 F.3d 1093, 1108 (10th Cir. 2019) ("Our circuit requires proof of intentional discrimination [for] compensatory damages under section 504, and we have suggested [] as much is required under Title II").²¹ "Intentional discrimination can be inferred from a defendant's deliberate indifference to the strong likelihood that pursuit of its questioned policies will likely result in a violation of federally protected rights." *J.V. v. Albuquerque Public Schools*, 813 F.3d 1289, 1298 (10th Cir. 2016). To the extent the Tenth Circuit even recognizes a failure-to-train-claim under the ADA,²² a plaintiff must provide "stringent proof" that "the need for more or different training is so obvious, and the inadequacy so likely to result in the violation" to show deliberate indifference. *Id.* at 1297-98. ADA Discrimination may be premised three theories: disparate treatment, disparate impact, or failure to make a reasonable accommodation. *Hamer*, 924 F.3d at 1108.

Plaintiffs' claims fail because there is no evidence the State Defendants intentionally

²⁰ The State Defendants dispute that many of the Plaintiffs had a disability within the meaning of the ADA and Rehabilitation Act. However, in light of the applicable summary judgment standard, the State Defendants do not dispute this element of Plaintiffs' ADA and Rehabilitation Act claims for purposes of this Motion. They intend and reserve the right to contest this element at trial.

²¹ Defendants acknowledge it is arguably an open question whether intentional discrimination is required under Title II, and there is some contradictory authority, at least for claims based on failure to accommodate. *Brooks*, 12 F.4th at 1167 (failure to accommodate "does not require a showing of discriminatory motive."). *Brooks* relied on a Title I employment case for that proposition, without reference to this Circuit's acknowledgement that it is an "unusual case" where plaintiffs can recover damages under Title II or 504. *Hamer*, 924 F.3d 1108. Defendants submit discriminatory intent is required for all Title II claims. *Id.* (collecting cases). That said, Plaintiffs' Title II claims fail regardless.

²² *J.V.*, 813 F.3d at 1297 (saying the Tenth Circuit "has not recognized a failure-to-train claim of discrimination under the ADA, but we have not foreclosed the possibility").

discriminated against them, i.e. acted with “discriminatory animus” or “deliberate indifference.” *Powers v. MSJ Acquisition Corp.*, 184 F.3d 1147, 1152-53 (10th Cir. 1999). Nor is there evidence Plaintiffs were discriminated against “by reason of” their disabilities; rather, the record shows WBS staff’s actions were based on Plaintiffs’ conduct. *J.V.*, 813 F.3d at 1296 (students’ conduct may be regulated, regardless of whether it might also be a manifestation of a disability). Any failure-to-accommodate theory based on Plaintiffs’ alleged mental health diagnoses fails Plaintiffs neither requested accommodations for those conditions, nor was it obvious they needed any. *Id.* at 1299. As to Plaintiff Tolar’s physical conditions, the record shows that accommodations were in fact provided to him. *See, supra* ¶¶ 109-157. With respect to a disparate impact theory, Plaintiffs’ claims fail because there is no “statistical evidence involving the appropriate comparables necessary to create a reasonable inference that any disparate effect [] was caused by [a] challenged policy and not other causal factors.” *J.V.*, 813 F.3d at 1296.

Acceptance of federal funds waives 11th Amendment immunity with respect to the Rehabilitation Act. *Havens*, 897 F.3d 1250, 1256 fn.4. But, although the immunity analysis differs, ADA and Rehabilitation Act claims are otherwise evaluated under a similar framework. *Crane v. Utah Dep’t of Corr.*, 15 F.4th 1296, 1312-1313 (10th Cir. 2021). The same “step-one” analysis applies to Rehabilitation Act claims, with some divergence on the causation element. Where the ADA requires a showing of discrimination “by reason of” a disability, the Rehabilitation Act requires discrimination “solely by reason of” a disability. *Id.* This standard is more onerous than the ADA’s but-for standard. *Id.* Thus, Plaintiffs’ Rehabilitation Act also fail.

V. Conclusion

For the foregoing reasons Defendants respectfully request the Court grant summary judgment in favor of Defendants on all claims.

DATED this 14th day of May, 2026.

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CERTIFICATE OF SERVICE

I do hereby certify that on this 14th day of May, 2026, a true and correct copy of the foregoing **Brief in Support of Motion for Summary Judgment** was served as indicated below:

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