UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

A.T., a minor, by and through his parent and natural guardian SHA-KEEMA TILLMAN; B.C., a minor, by and through KRISTI COCHARDO; on behalf of themselves and all others similarly situated, Plaintiffs, v. DAVID HARDER, Broome County Sheriff, in his official capacity, et al. Defendants.	17-CV-0817 (DNH)(DEP)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

In *V.W. v Conway,* this Court held that the plaintiff class was substantially likely to succeed on its claims that placing juveniles in solitary confinement and denying them access to education violates the Eighth and Fourteenth Amendments. 236 F. Supp. 3d 554, 585 (N.D.N.Y 2017). Defendants Harder, Smolinsky and Moore (collectively, "Sheriff's Office") are aware of this Court's holding yet refuse to change their nearly identical policies. As a result, 16-and 17-year-olds--many with mental illnesses--continue to suffer from the brutal conditions of solitary confinement and are deprived of an education. Defendants' corrections officers routinely place these teenagers in solitary confinement, locking them in a cell for 23 or more hours a day for weeks and even months on end. While Plaintiffs are in solitary, Defendants deny them almost all human contact, allows physical and verbal abuse by corrections officers and adult inmates, grants Plaintiffs no meaningful educational services or mental health treatment, and often shackles them by the wrists and ankles for the only hour they are allowed out of their cells. These extreme conditions seriously harm juveniles, as shown by expert testimony and several serious suicide threats.

The Supreme Court recognizes that juveniles in the criminal justice system are merit special protections given their developmental state. *See Graham v. Florida*, 560 U.S. 48, 68-69, 74 (2010); *see also Miller v. Alabama,* 567 U.S. 460, 465,471 (2012); *Roper v. Simons*, 543 U.S. 551, 573-74 (2005). Accordingly, this Court, and nearly every district court considering this issue on the merits or on a motion for a preliminary injunction, have recognized that placing juveniles in isolation for even a short period is cruel and unusual punishment. Policy makers have banned solitary confinement for juveniles in Rikers Island, Los Angeles County, the Federal Bureau of Prisons, and the juvenile detention facilities of 21 states --- a wave of reform

stemming from widespread recognition that children are particularly vulnerable to the harmful effects of isolation.

Despite repeated warnings and ample evidence of the risk of harm to juveniles from solitary confinement, the Sheriff's Office continues to put teenagers in solitary. Despite knowledge of its obligation to provide school-age children an education in compliance with state and federal law, the Sheriff's Office denies the juveniles in its charge such an education. Absent a preliminary injunction, the Plaintiffs will continue to suffer irreparable harm in the form of mental illnesses, significant risks of suicides and long-term educational setbacks. Therefore, Plaintiffs seek a preliminary injunction ending Defendants' dangerous use of solitary confinement and requiring Defendants to provide mandated educational services to Plaintiffs.

STATEMENT OF FACTS

I. THE SHERIFF'S OFFICE ROUTINELY PUNISHES JUVENILES WITH SOLITARY CONFINEMENT.

The Broome County Correctional Facility ("The Jail"), a 536-bed correctional facility in the Town of Dickinson, under the control of Defendant Harder, primarily houses adults.[1] However, it often also houses 16 and 17-year-olds, including many with, mental health or intellectual disabilities. The majority of these teens are pretrial detainees who have not been

[1]Decl. of B.C. ("B.C. Decl.") ¶ 2 (October 24, 2017), attached as Ex. 2 to Decl. of Joshua Cotter in Support of Pls' Mot. For a Preliminary Injunction (Feb 5, 2018)("Cotter Decl."); Decl. of A.T. ("A.T. Decl.") ¶ 2 (November 1, 2017), attached as Ex 1 to Cotter Decl.; Decl. of O.C. ("O.C. Decl.") ¶ 2 (November 7, 2017), attached as Ex. 5 to Cotter Decl.; Decl. of C.J. ("C.J. Decl.") ¶ 7(November 1, 2017), attached as Ex 3 to Cotter Decl.; Decl. of D.K. ("D.K. Decl.") ¶ 11 (November 1, 2017), attached as Ex. 4 to Cotter Decl.; *see* Corrections Dep't Broome County Sheriff's Office, http://broome.ny.us/sheriff/corrections Cotter Decl. Ex. 7.

convicted of any crime, and most are Black or Latino.[2] The average length-of-stay at the facility for juveniles is 37 days.[3]

The Sheriff's Office makes no distinction in its disciplinary policies among adults, juveniles, and juveniles with mental health and intellectual disabilities.[4] Pursuant to the Jail's policies and the Inmate Handbook, Defendants can impose any of several forms of disciplinary isolation or solitary confinement for *any* rule violation.[5] First, using "informal discipline," a corrections officer can offer an inmate/detainee the opportunity to waive his right to a hearing, and accept the officer's proposed keep-lock sanction, routinely 24 hours locked in their cell.[6] Next, the corrections officer may impose "administrative segregation," to confine juveniles in their cells or in the Segregation Housing Unit ("SHU") for up to 15 business days (three weeks) pending a disciplinary hearing.[7] The jail can use "protective custody," another form of "administrative segregation," to isolate inmates for even longer periods.[8] Finally, the Sheriff's Office will impose "disciplinary segregation," commonly referred to as "keep-lock", as an admittedly punitive measure. Juveniles serve disciplinary segregation sentences of a "specified

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[2] Declaration of Jami Waldron ("Waldron Decl") ¶ 7 (January 3, 2018) attached as Exhibit 43 to Cotter Decl.; *See* State Commission on Corrections Monthly Inmate Population Statistics attached as Exhibit 44 to Cotter Decl.

[3] Waldron Decl. ¶ 6.

[4] *See* Inmate Handbook (Sept. 2017) at 23-24, ("Inmate Handbook"); attached as Exhibit 8 to Cotter Decl; Broome Cty. Sheriff's Office, Policy Statement No. II-9-A: Initiating Inmate Discipline attached as Ex. 12 to Cotter Decl; Broome Cty. Sheriff's Office, Policy Statement No. II-9-I: Categories of Offenses, attached as Ex. 13 to Cotter Decl.

[5] Inmate Handbook at 23-24, 33.

[6] *See* Inmate Handbook 24; *see e.g.* Disciplinary File of A.T. at 1-8, (A.T. Discipline) attached as Ex. 21 to Cotter Decl.; Disciplinary File of B.C. at 1-7, (B.C. Discipline) attached as Ex. 18 to Cotter Decl.

[7] Inmate Handbook at 23-24; Broome Cty. Sheriff's Office, Policy Statement No. II-9-B: Disciplinary Hearings, attached as Ex. 10 to Cotter Decl.; Broome Cty. Sheriff's Office, Policy Statement No. II-8-A: Administrative Segregation ("Ad. Seg. Policy") attached as Ex. 11 to Cotter Decl *See e.g.* A.T. Discipline at 17, 19; B.C. Discipline at 8, 11.

[8] *See* Ad. Seg Policy; B.C. Decl. ¶ 4.

period of time" for alleged misbehavior in the general population housing unit (F-Pod) or in the SHU.[9]

Whatever the label used by the Sheriff's Office to describe the sanction, and whether it is served in the SHU or on the juvenile pod in general population, solitary confinement of juveniles at the Jail means being locked in a cell that is approximately eight by ten feet, with minimal furnishings, for approximately 23 hours a day.[10] While in solitary, juveniles have no meaningful human contact: they eat alone in their cells,[11] receive no programming and are only allowed out of their cells for a maximum of one hour per day. Often teens do not receive even an hour a day of out-of-cell recreation.[12] The Jail also denies them mental stimuli: they have no access to the radio or television and limited access to reading materials.[13] They are denied meaningful mental health treatment.[14] If teens admit feeling suicidal, the jail strips them naked and places them in isolation in a different cell under suicide watch without any meaningful therapeutic services.[15] When juveniles say they are no longer suicidal, the Jail are returns them to solitary confinement to serve out the rest of their punishment.[16]

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[9] Broome Cty. Sheriff's Office, Policy Statement No. II-9-I: Categories of Offenses, attached as Ex. 13 to Cotter Decl; Inmate Handbook 23-24, 33-34. *See e.g.* A.T. Discipline; B.C. Discipline; B.C. Decl. ¶ 9; A.T. Decl. ¶ 9; C.J. Decl. ¶¶ 5,8; D.K. Decl. ¶¶ 10, 11; O.C. Decl. ¶¶ 7-9.

[10] Inmate Handbook at 33-36; B.C. Decl. ¶ 5; D.K. Decl. ¶¶ 5-6; C.J. Decl. ¶¶ 5-6; A.T. Decl. ¶¶ 5-6, 8; Declaration of Andrea Weisman, Ph.D. ¶ 17 (Weisman Decl.) (Feb. 5, 2018).

[11] A.T. Decl. ¶ 9; B.C. Decl. ¶ 5; C.J. Decl. ¶ 9; *see* Inmate Handbook at 35.

[12] *See* Inmate Handbook 35 (stating that detainees exercise "may be restricted due to your conduct."); A.T. Decl. ¶ 8; B.C. Decl. ¶ 5; C.J. Decl. ¶ 5; D.K. Decl. ¶ 9.

[13] *See* Inmate Handbook 35-36; A.T. Decl. ¶¶ 6-7; B.C. Decl. ¶ 8; O.C. Decl. ¶ 12; D.K. Decl. ¶¶ 6-8; C.J. Decl. ¶ 6.

[14] Weisman Decl. ¶¶ 54-56; *see e.g.* A.T. Decl. ¶ 12; B.C. Decl. ¶ 20-22; C.J. Decl. ¶ 10; D.K. Decl. ¶ 14, 24; O.C. Decl. ¶ 15.

[15] Weisman Decl. ¶¶ 54-57; *see e.g.* April 23, 2017 and April 26, 2017 Incident Reports of B.C. at 2 (B.C. Incident Reports) attached to Cotter Decl. as Ex. 19.

[16] *See* Medical Records of B.C. (B.C. Medical) at 5. 14-15, attached to Cotter Decl. as Ex. 46.

Solitary confinement appears to be the only sanction that the Sheriff's Office uses for discipline; the disciplinary histories of 5 juveniles contain no lesser sanctions.[17] The Sheriff's Office puts juveniles in solitary confinement regardless of their mental health history.[18] They do not consult the mental health workers at the jail to determine whether solitary would be an appropriate placement given the teenagers' disability.[19] Solitary sanctions result from such minor misbehavior as ripping two towels worth $1.17 each (30 days),[20] talking through a cell door (30 days);[21] not wanting to eat in the cell (15 days),[22] writing on a sweatshirt,[23] and using the bathroom during count (7 days).[24]

Jail policy denies juveniles in solitary confinement mandated educational instruction, including special educational services, without notice or an opportunity to be heard.[25] Despite its shared responsibility with the Chenango Valley Central School District to provide education and special education instruction to juveniles within the Jail, the Sheriff's Office categorically denies this instruction to juveniles in solitary confinement.[26] At most, Defendants occasionally give each juvenile a packet of worksheets[27] but then do not allow instruction or follow-up about the

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[17] A review of the disciplinary histories of five juveniles which were produced as a result of expedited discovery and throughout this litigation, reveals that no sanction independent of disciplinary isolation was ever imposed on them. Waldron P.I. Decl. ¶ 8. Lesser sanctions were used in addition to, not as an alternative to, solitary confinement. *See id.*

[18] Weisman Decl. ¶ 51; *see e.g.* O.C. ¶ 15; D.K. ¶¶ 14, 24. A.T. ¶ 12.

[19] Weisman Decl. ¶ 51.

[20] B.C. Discipline at 9.

[21] A.T. Discipline at 10, 12.

[22] A.T. Discipline at 15

[23] A.T. Discipline at 16.

[24] C.J. Decl. ¶ 8.

[25] A.T. Decl. ¶¶ 16-17; O.C. Decl. ¶ 13; D.K. Decl. ¶¶ 16-17; B.C. Decl. ¶¶ 11-13; C.J. Decl. ¶¶ 12, 13; *see also* New York State Commission of Corrections Report attached as Ex. 17 of Cotter Decl.

[26] A.T. Decl. ¶¶ 16-17; O.C. Decl. ¶ 13; D.K. Decl. ¶¶ 16-17; B.C. Decl. ¶¶ 11-13; C.J. Decl. ¶¶ 12, 13.

[27] *Id.*

worksheets and rarely even collect them.[28] Juveniles receive no notice they will be denied educational instruction when placed in solitary and no opportunity to contest their denial of education.[29]

Even worse, juveniles in the SHU endure inhuman living conditions and brutal treatment at the hands of adult inmates and guards.[30] SHU cells are dimly lit, unhygienic, and covered in graffiti.[31] Recreation in the SHU takes place in a barren yard with a cement floor, surrounded by cement walls, with fencing covering the top.[32] Corrections officers routinely shackle the juveniles around their waists, wrists and ankles during their only daily hour of recreation in the SHU.[33] The shackling may continue for several weeks.[34] Adult inmates attack juveniles, throw urine at them, sometimes expose their genitals to the teens, and shout their plans to attack the teens and their families.[35] Juveniles receive no reprieve from the trauma when they interact with corrections officers, who routinely threaten and assault the juveniles even when they are in handcuffs.[36] On one occasion a corrections officer pepper sprayed a juvenile confined in a restraint chair.[37]

II. SOLITARY CONFINEMENT IS INFLICTING SERIOUS HARM ON JUVENILES, AND SUBSTANTIALLY RISKS FURTHER SERIOUS HARM

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[28] *Id.*
[29] *Id.*
[30] *See* B.C. Decl.¶¶ 16-19; A.T. Decl. ¶¶ 19-20; C.J.Decl. ¶¶ 15-16; D.K. Decl. ¶¶ 20-22; O.C. Decl. ¶¶ 9-10.
[31] Weisman Decl. ¶ 18.
[32] A.T. ¶ 8; D.K. ¶ 8; O.C. ¶ 11;Weisman Decl. ¶ 22.
[33] A.T. ¶ 10; B.C. ¶ 6; D.K. ¶ 12
[34] A.T. SHU Restraint Orders attached as Ex. 22 of Cotter Decl.; B.C. SHU restraint Orders attached as Ex. 20 of Cotter Decl.
[35] B.C. ¶¶ 16-19; A.T. ¶¶ 19-20; C.J. ¶¶ 15-16; D.K. ¶¶ 20-22; O.C. ¶¶ 9-10.
[36] A.T. ¶ 20; B.C. ¶ 18; C.J. ¶ 16; D.K. ¶ 22; O.C. ¶ 10.
[37] A.T. ¶ 20.

The use of solitary confinement against juveniles is universally condemned by professional organizations in the psychiatric and corrections fields—including the Sheriff's Office's own accrediting agency, the National Commission on Correctional Care—because it inflicts serious harm and substantially risks serious harm to juveniles.[38] The scientific consensus is that juveniles are especially susceptible to psychological harm from isolation because they are still developing socially, psychologically, and neurologically.[39] Solitary confinement perpetuates, exacerbates, or precipitates mental illnesses in juveniles.[40] It can lead to long-term mental health conditions and can induce trauma, which has a high likelihood of causing permanent changes in adolescent brain development and creating a higher risk of permanent psychiatric after-effects.[41] Solitary creates immediate risks of suicide—almost all suicides in juvenile correctional settings occur when juveniles are in some type of isolation --- and substantially increases the long-term risk of suicide compared to the general population. [42] Because juveniles with mental illnesses—expected to be over 60% of juveniles in correctional settings—already have weakened defense mechanisms due to cognitive deficits in their brain structure or biochemistry, they are at an even higher risk for further mental health complications and more susceptible to significant trauma.[43]

The harm posed to the juveniles at the Jail is evident from the Sheriff's Office's treatment of named Plaintiffs B.C. and A.T. B.C. served at least 247 days in solitary confinement. For 64 of those days he was shackled for his hour of recreation.[44] On one occasion, B.C. was in his cell

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[38] Weisman Decl. ¶ 39.
[39] *Id.* ¶ 31.
[40] *Id.* ¶¶ 30, 36.
[41] *Id.* ¶¶ 34-37.
[42] *Id.* ¶¶ 56-57; *See also* Position Statement of Nat'l Comm'n on Corr. Health Care, Prevention of Juvenile Suicide in Correctional Settings (October 2012), Cotter Decl. Ex. 47.
[43] *Id.* ¶¶ 43-46.
[44] *See* B.C. Discipline; B.C. Restraint Orders.

in the SHU crying, rocking himself and pulling his hair.[45] When the corrections officers questioned him, he was unresponsive.[46] Consequently, they moved him to the medical unit for observation.[47] There, he was stripped, and placed on observation for three days and then returned to his cell in the SHU.[48] On the night of his return, B.C. started kicking his door, then punching himself in the face, screaming incoherently, and throwing his head against the door and walls.[49] Corrections officers returned him to the medical unit for an additional day of observation after which he was returned to solitary.[50] For the next week, corrections officers shackled B.C. for his only hour of recreation but provided no therapeutic interventions.[51] B.C. also suffered from anxiety and depression and auditory hallucinations while he was in solitary.[52] Even when B.C. specifically said that solitary aggravated his problems, the Sheriff's Office did not help or assess him in any way.[53]

The Jail placed A.T. in solitary for over 200 days, and shackled him during his only hour of recreation for 49 of those days.[54] Despite his pleas for help and the Sheriff's Office's knowledge of his ADHD and Bi-Polar disorder, it continued his solitary placement.[55] In solitary, A.T. suffered from severe depression, anxiety, and insomnia.[56] When he fell asleep he had

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[45] *See* B.C. Incident Reports at 1.
[46] *Id.*
[47] *Id.*
[48] *Id.*; B.C. Medical Records at 5, 14, 15.
[49] Incident Reports at 2-3.
[50] B.C. Medical Records at 14, 15; *Id.* at 6 (indicating the extent of his counseling was being advised to "avoid taking actions to hurt himself".)
[51] B.C. Restraint Order at 1; B.C. Medical Records at 1 (indicating he had to self-refer to mental health services just three days after having suicidal ideations and still did not receive meaningful mental health interventions.)
[52] B.C. Medical Records at 2, 3, 10,11,12,13.
[53] B.C. Medical Records at 2.
[54] *See* A.T. Discipline; A.T. Restraint Orders.
[55] Medical Records of A.T. at 1-8, 10 (A.T. Medical Records) attached as Ex. 45 to Cotter Decl.
[56] A.T. Medical Records at 1-6, 8, 17.

nightmares.[57] He even considered hurting himself.[58] Defendants did nothing to address his concerns and left him in solitary confinement.[59]

Other juveniles also suffered dramatically from solitary:

- C.J., a 17-year-old boy, suffered from depression while in solitary confinement. He was so deprived of meaningful human interaction he began to talk to himself at night;[60]
- D.K., a 17-year-old boy, who is diagnosed with ADHD and Bi-Polar Disorder was so stressed and anxious in solitary he began to have suicidal ideations;[61]
- L.M., a 17-year old boy, was taken from solitary to suicide watch and then back to solitary after a few days.[62]

III. SOLITARY CONFINEMENT IS MAKING THE FACILITY LESS SAFE.

The Sheriff's Office's use of solitary confinement makes the facility less safe.[63] Disciplinary isolation does nothing to deter bad behavior, encourage better behavior, or to rehabilitate misbehaving youths.[64] To the contrary, it inhibits juveniles' ability to cope with stressful situations and leaves them angrier and more disturbed, and leading to more misbehavior and rules infractions.[65] As Dr. Weisman explains in detail, both routine imposition of isolation for minor misbehavior and continuation of solitary after the point that immediate safety concerns disappear undermines safety.[66] Effective behavior management systems reward good behavior

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[57] *Id.* at 4.
[58] A.T. ¶ 11.
[59] *Id.* at 2, 3, 5.
[60] C.J. Decl. ¶ 11.
[61] D.K. Decl. ¶ 13.
[62] Weisman Decl. ¶ 56.
[63] *Id.* ¶ 46, 79.
[64] *Id.* ¶ 77.
[65] *Id.* ¶¶ 77-79.
[66] *Id.* ¶¶ 81-85

and have clear graduated sanctions.[67] Implementation of these programs has been shown to drastically reduce misconduct among the inmate population.[68]

ARGUMENT

Plaintiffs seek a preliminary injunction (1) ordering Defendants Harder, Smolinsky and Moore to stop using disciplinary isolation for juveniles, (2) ordering Defendants Harder, Smolinsky and Moore to afford eligible juveniles the educational instruction New York law requires, and juveniles with qualifying disabilities under the Individuals with Disabilities Education Act ("IDEA") a free and appropriate public education ("FAPE"), and (3) ordering Defendants Harder, Smolinsky and Moore to provide every juvenile with an intellectual or mental disability an individualized assessment prior to disciplining him. Plaintiffs merit a preliminary injunction because they have a "clear or substantial" likelihood of success on the merits, they make a "strong showing" of irreparable harm in the absence of preliminary relief, the balance of equities tips in their favor, and the requested injunction is in the public interest. *See V.W.* 236 F. Supp. 3d at 581 (setting forth standard for mandatory relief) (citations and internal quotation marks omitted). To the extent the class is not certified at the time the Court rules on the motion for preliminary injunction, it "may conditionally certify the class or otherwise award a broad preliminary injunction, without a formal class ruling, under its general equity powers." *Strouchler v. Shah*, 891 F. Supp. 2d 504, 517 (S.D.N.Y. 2012).

I. THE PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THEIR EIGHTH AND FOURTEENTH AMENDMENT CHALLENGE TO THE SOLITARY CONFINEMENT OF JUVENILES.

A majority of Plaintiffs' class consists of pre-trial detainees. *See supra* n. 2. The Fourteenth Amendment protects these juveniles against any form of punishment and thus

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[67] *Id.*
[68] *Id.* ¶¶ 81, 86.

provides broader protections than the Eighth Amendment applies to post-conviction detainees. *See Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2475 (2015) (so holding in an excessive force case). In recognition of this broader protection, the Second Circuit recently held the Eighth Amendment standard requiring that a convicted prisoner must show that the defendant was aware of the substantial risk of harm caused by his actions does not apply to claims made by pretrial detainees under the Fourteenth Amendment. *Darnell v. Pineiro*, 849 F.3d 17, 35-36 (2d Cir. 2017). Instead, the pre-trial detainee need only show that "the defendant-official acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though the official knew, or should have known, that the condition posed an excessive risk to health or safety." *Id.* at 35. Plaintiffs will first address the Eighth Amendment Standard because, by establishing an Eighth Amendment violation, as Plaintiffs do here, Plaintiffs establish a constitutional violation for both pre-trial and post-conviction juveniles.

Even under the Eighth Amendment test applicable to convicted prisoners, juveniles enjoy heightened protections. *See Graham v. Florida*, 560 U.S. 48, 68, 74 (2010) (recognizing that "developments in psychology and brain science continue to show fundamental differences between juveniles and adult minds," and holding that juveniles cannot be sentenced to life without parole ("LWOP") for non-homicide offenses); *see also Miller v. Alabama,* 567 U.S. 460, 465, 471 (2012) (recognizing that "children are constitutionally different from adults for purposd of sentencing" and striking down mandatory LWOP sentences for juveniles convicted of homicide); *Roper v. Simons*, 543 U.S. 551, 573-74 (2005) (holding that the death penalty cannot be imposed on juveniles in light of juveniles' vulnerabilities and differences from adults).

To sustain a deliberate indifference challenge to facility discipline, Plaintiffs must show that Defendants caused a risk of harm that is "objectively sufficiently serious," *Trammell v. Keane*, 338 F.3d 155, 161 (2d Cir. 2003), and that Defendants "kn[e]w of and disregard[ed]" the risk. *Id.* at 164 (citing *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)). In addition, facility discipline that is not "reasonably calculated to restore prison discipline and security" is evidence of cruel and unusual punishment. *Trammell*, 338 F.3d at 163. The Plaintiffs address each of these elements of an Eighth Amendment claim.

A. Solitary Confinement Poses an Objectively Sufficiently Serious Harm To Juveniles.

Solitary confinement of juveniles at the Jail inflicts "objectively sufficiently serious" harm. *Trammell*, 338 F.3d at 161 (internal quotations omitted). This prong of an Eighth Amendment analysis requires a "scientific and statistical inquiry into the seriousness of the potential harm" and its likelihood, as well as an assessment of whether that harm is sufficiently serious, which is measured by "whether society considers the risk . . . to be so grave that it violates contemporary standards of decency to expose *anyone* unwillingly to such a risk." *Helling v. McKinney,* 509 U.S. 25, 36 (1993). The Plaintiffs satisfy both parts of this analysis.

i. Solitary Confinement Poses a Serious Harm on Juveniles Because of Their Heightened Vulnerability.

Harm is serious for Eighth Amendment purposes where, as here, there is a scientific showing of "substantial risk of serious harm." *Farmer,* 511 U.S. at 834 (1994) (describing the harm test set forth in *Helling*). First, as described above, a significant percentage of the juveniles at the Jail are at a substantial risk of serious harm because they have pre-existing mental illnesses, and courts around the country have uniformly held that the Eighth Amendment

prohibits placing adults with mental health conditions in solitary confinement.[69] As one court found, "[f]or these inmates, placing them in the SHU is the mental equivalent of putting an asthmatic in a place with little air to breathe." *Madrid v. Gomez,* 889 F. Supp. 1146, 1265 (N.D. Cal. 1995). Given that this case involves *juveniles* with pre-existing illnesses, the risk of serious harm is even greater, Weisman Decl. ¶ 43, and clearly violates the Eighth Amendment.

Second, just as courts around the country have held that those with mental illnesses cannot be punished with solitary confinement because they are as a class vulnerable to the risks of serious harm, juveniles should not be punished with solitary confinement because they are even more vulnerable as a class to its adverse effects. *See supra*, at 6-7; Weisman Decl. ¶ 36. District courts have repeatedly recognized this principle and held that solitary confinement of juveniles, even for very short periods of time, poses a substantial risk of serious harm. *See V.W.* 236 F. Supp. 3d at 584 (holding the "risks posed [to juveniles in solitary confinement] are even

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[69] *See, e.g.*, *Cmty. Legal Aid Soc'y. v. Coupe*, No. 15-CV-688 (GMS), 2016 WL 1055741, at *4 (D. Del. Mar. 16, 2016) (holding that plaintiff stated an Eighth Amendment claim by alleging that defendants placed individuals with serious mental illness in solitary confinement); *Ind. Protection & Advocacy Serv. Comm'n v. Comm'r,* 1:08-cv-01317, 2012 WL 6738517, at *23, (S.D. Ind., Dec. 31, 2012) (holding that the practice of placing prisoners with serious mental illness in segregation without providing them adequate mental health treatment violated the Eighth Amendment); *Jones'El v. Berge,* 164 F. Supp. 2d 1096, 1117, 1125 (W.D. Wis. 2001) (granting injunctive relief to prisoners with serious mental illness housed in a supermax prison where they were in almost complete isolation); *Ruiz v. Johnson,* 37 F. Supp. 2d 855, 915 (S.D. Tex. 1999) (holding unconstitutional the solitary confinement of mentally-ill prisoners), *rev'd on other grounds*, 243 F.3d 941 (5th Cir.2001), *adhered to on remand*, 154 F. Supp. 2d 975 (S.D. Tex. 2001); *Coleman v. Wilson*, 912 F. Supp. 1282, 1320-21 (E.D. Cal. 1995) ("[D]efendants' present policies and practices with respect to housing of [prisoners with serious mental disorders] in administrative segregation and in segregated housing units violate the Eighth Amendment rights of class members."); *Casey v. Lewis,* 834 F. Supp. 1477, 1548-50 (D. Ariz. 1993) (finding an Eighth Amendment violation when "[d]espite their knowledge of the harm to seriously mentally ill inmates, ADOC routinely assigns or transfers seriously mentally ill inmates to [segregation units]"); *Langley v. Coughlin*, 715 F. Supp. 522, 540 (S.D.N.Y. 1989) (holding that prison officials' "failure to screen out from SHU those individuals who, by virtue of their mental condition, are likely to be severely and adversely affected by placement there" plausibly rises to cruel and unusual punishment).

greater [than the risks posed to adults with mental illness], given that *juveniles* share the same increased vulnerability to long-term, or even permanent, psychological damage); *Lollis v. N.Y. State Dep't of Soc. Servs.*, 322 F. Supp. 473, 480, 482-84 (S.D.N.Y. 1970) (finding the solitary confinement of two juveniles in a barren room for six days and two weeks respectively as punishment for fighting to be cruel and unusual punishment and issuing a preliminary injunction to stop their continued confinement based on the declarations of psychiatrists, psychologists and educators who were "unanimous in their condemnation" of the practice); *Morgan v. Sproat*, 432 F. Supp. 1130, 1138-40 (S.D. Miss. 1977) (relying on expert testimony of harm and evidence of a suicide attempt and finding that confining delinquent teenage boys for an average of 11 days in a barren room, where they were prohibited from talking to others and were allowed out only during recreation and twice-daily showers, violated the Eighth Amendment); *Inmates of Boys' Training Sch. v. Affleck*, 346 F. Supp. 1354, 1360, 1366-67 (D.R.I. 1972) (holding that isolation of juveniles for three to seven days "in a dark and stripped confinement cell with inadequate warmth and no human contact can only lead to [their] destruction" and amounted to cruel and unusual punishment); *Doe v. Hommrich, et al.*, 3:16-cv-00799 (AAT), Temporary Restraining Order ¶ 3, 6, 8 ECF No. 9 (M.D. Tenn. April 25, 2016) (issuing a temporary restraining order preventing further isolation of a juvenile who had been in solitary for six days and concluding that the "solitary confinement of juveniles for punitive or disciplinary reasons, especially for the length of time that Defendants have confined Plaintiff and especially for youth who may suffer from mental illness, violates the Eighth Amendment's prohibitions against inhumane treatment of detainees.") Cotter Decl. Ex. 23.

Third, juveniles in solitary confinement at the Jail are particularly vulnerable to the risk of harm because conditions in solitary compound the already high risk of psychiatric harm. *See*

Walker v. Schult, 717 F.3d 119, 125 (2d Cir. 2013) (holding that an inmate may show that a "combination" of conditions posed "an unreasonable risk of serious damage to his health"). Juveniles placed in solitary are verbally and physically abused by not only adult inmates but also by corrections officers. *See supra* 6; *Villante v. Dep't of Corr.*, 786 F.2d 516, 522-23 (2d Cir. 1986) (holding that "proof that [sexual] threats and abuse were a condition of confinement" for an adult inmate and proof that defendants were deliberately indifferent to the pervasive risk of harm would establish an Eighth Amendment violation.); *Chandler v. District of Columbia Dep't of Corrections*, 145 F.3d 1355, 1361 (D.C. Cir. 1998) ("the repeated threat of physical harm,. . . sexual harassment, . . . or a threat accompanied by conduct supporting the credibility of the threat" may violate the 8th Amendment.) The conditions in solitary are so harsh that multiple juveniles have expressed suicidal ideations as a result of their placement in solitary.[70]

Finally, corrections officers routinely place juveniles in their first week in the SHU in four-point mechanical restraints during their one-hour of recreational time. *See supra* n. 33-34. Although not mandated by policy, guards often continue to bind the teenagers' ankles, waist, and wrists during recreation for weeks at a time. (*Id.*) While shackled, the Plaintiffs cannot do large muscle exercises of any kind. (*Id.*) This shackling is simply another way to punish the juveniles who have been placed in the SHU. *See* Weisman Decl. ¶ 72; *See Hope v. Pelzer*, 536 U.S. 730, 737-38 (2002) (noting lack of an ongoing safety concern when holding the prison's use of mechanical restraints violates the 8th Amendment.).

The Court should not wait until children's threats of suicide become reality before finding that the Sheriff's Office is putting juveniles at a substantial risk of serious harm. *See*

[70] *See* B.C. Incident Report; A.T. ¶ 11; D.K. ¶ 13.

Helling, 509 U.S. at 33 (recognizing that "a remedy for unsafe conditions need not await a tragic event").

ii. Solitary Confinement Poses an Objectively Sufficiently Serious Harm Because the Risk of Harm Violates Contemporary Standards of Decency.

The harm described above is sufficiently serious under "contemporary standards of decency," *Helling* 509 U.S. at 36. Federal and state "practices are an important part of the Court's inquiry into consensus," *Graham*, 560 U.S. at 62, and there is an emerging consensus rejecting disciplinary isolation for juveniles. In 2016, the federal government ended the use of solitary confinement for juveniles in its prisons.[71] At least twenty-one states, including New York, have prohibited juvenile detention facilities from using disciplinary isolation.[72] New York and North Carolina, the only two states that currently automatically prosecute 16-year-olds as adults, have banned solitary confinement for juveniles in their respective state's prison system.[73] Finally, in the Los Angeles juvenile justice system and Rikers Island—the largest adult jail in New York and second largest in the country—solitary confinement for juveniles has also been banned.[74]

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[71] *See* Fact Sheet: Department of Justice Review of Solitary Confinement, whitehouse.gov (Jan. 25, 2016), Cotter Decl. Ex. 24.

[72] *See* Lowenstein Sandler LLP & Lowenstein Center for the Public Interest, *51-Jurisdiction Survey of Juvenile Solitary Confinement Rules in Juvenile Justice Systems* (Oct. 2015), Cotter Decl. Ex. 27.

[73] Press Release, Office of Governor Andrew Cuomo, Governor Cuomo Announces Dramatic Reform in Use of Special Housing for Inmate Discipline, Cotter Decl. Exhibit 28; *see also* Press Release, N.C. Dep't of Public Safety (Dec. 16, 2015), State Prison System Announces End to Solitary for Inmates Under 18 (Jun. 15, 2016), Cotter Decl. Ex. 29.

[74] *See* "Juvenile Solitary Confinement has been Banned in L.A. County" (May 3, 2016), attached as Ex. 30 to Cotter Decl.; *see also* "De Blasio Administration Ends Use of Punitive Segregation of Adolescent Inmates" (Dec 17, 2014), Cotter Decl. Ex. 31. International standards also condemn the practice. *See* General Comment No. 10 of Comm. on the Rights of the Child on its Forty-Fifth Session, ¶ 89, U.N. Doc. CRC/C/GC/10, (Apr. 25, 2007) (prohibiting the use of solitary confinement on juveniles), Cotter Decl. Ex. 25; United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), G.A. Res. 70/175, U.N. Doc A/RES/70/175 (Dec. 17, 2015) (same), Decl. Ex. 26.

Courts also rely on psychiatric and professional studies to evaluate contemporary standards of decency. *See Hall v. Florida*, 134 S. Ct. 1986, 1993 (2014) (consulting "psychiatric and professional studies" to determine whether there is a consensus that "instructs how to decide" the Eighth Amendment claim), and there is a clear consensus among studies that disciplinary isolation should never be used for juveniles. Noting adolescents' "developmental vulnerability" and finding that most suicides in juvenile correctional facilities occur when the juvenile is in isolation, the American Academy of Child & Adolescent Psychiatry and the American Medical Association, as well as other medical professional organizations, opposes the use of solitary confinement for juveniles.[75] There is also an emerging consensus in the corrections field, including from the agency that accredits the Jail, that solitary confinement should not be used on juveniles. Position Statement of Nat'l Comm'n on Corr. Health Care, Solitary Confinement (Isolation) (Apr. 10 2016), Cotter Decl. Ex. 36 ("juveniles . . . should be excluded from solitary confinement for any duration").

Finally, the State of New York recognized the profound differences between juvenile and adult inmates through the recently passed "Raise the Age" legislation, under which juvenile prisoners will not be housed in adult jails after October 1, 2019.[76] [77]*See Graham*, 560 U.S. at 62

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[75] *See* Solitary Confinement of Juvenile Offenders, Am. Acad. of Child & Adolescent Psychiatry (April 2012), Cotter Decl. Ex. 33; *see also* Press Release, Am. Med. Assoc., AMA Adopts New Policies to Improve Health of Nation at Interim Meeting (Nov. 11, 2014), Cotter Decl 34 (calling on correctional facilities to halt the isolation of juveniles in solitary confinement for disciplinary purposes); Policy Statement of Am. Public Health Assoc., Solitary Confinement as a Public Health Issue (Nov. 5, 2013), Cotter Decl. Ex. 35 (juveniles should be categorically excluded from solitary confinement).

[76] Press Release, Office of Governor Andrew Cuomo, Governor Cuomo Signs Legislation Raising the Age of Criminal Responsibility to 18-years-old in New York, Cotter Decl. Ex. 32.

[77] This provides no relief to the putative class and subclasses because future 16-and 17-year-olds who will be held at the jail until that date will be subject to the Jail's current policies.

("[T]he 'clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures.'") (citation omitted).

B. The Sheriff's Office Knew of and Disregarded the Risk of Harm Inflicted on Juveniles by Its Solitary Confinement Policies and Practices.

In order to be liable for an Eighth Amendment violation, a defendant must have acted with deliberate indifference, that is he must "know[] of and disregard an excessive risk to inmate health or safety." *Farmer*, 511 U.S. at 837. For this prong, Plaintiffs may rely on post filing behavior such as continued conduct in the face of allegations and evidence of an objectively intolerable risk of serious injury. *See Farmer,* 511 U.S. at 846 & n.9. Here, even after Plaintiffs detailed the serious harms and risk of harm inflicted on juveniles in solitary confinement, *see* Compl., ECF No. 1, the Defendants continued the practice, proving deliberate indifference.[78]

The evidence of Defendants' awareness--- before litigation --- of an intolerable risk of serious injury is even stronger. The Sheriff's Office ignored complaints from the juveniles about solitary,[79] placed at least three juveniles housed in the SHU on suicide watch,[80] were aware B.C. was exhibiting self-harming behaviors and was having auditory hallucinations in the SHU,[81] were aware A.T. was suffering from severe anxiety, depression and insomnia while in the SHU,[82] and ignored juveniles when they specifically referenced their placement in solitary as a cause of their problems.[83] Further, as discussed above, the National Commission on Correctional Health Care, their own accrediting agency, has disapproved of the use of solitary confinement on juveniles. Defendants' blind perpetuation of their constitutionally flawed policies is prototypical deliberate indifference. *See Walker* 717 F.3d at 129-30; *Farmer*, 511 U.S. at 842 (subjective

[78] O.C. ¶ 16; *See* Waldron P.I. Decl. ¶ 9.
[79] A.T. ¶ 21; B.C. ¶ 23; C.J. ¶ 17; D.K. ¶ 23.
[80] B.C. Incident Report; Weisman Decl. ¶ 56.
[81] *See supra* at 7-8.
[82] *Id.*
[83] A.T. Medical Record at 1; B.C. Medical Record at 2.

deliberate indifference can be inferred from evidence that defendants ignored harms after notice of them); *Johnson v. Wright*, 412 F.3d 398, 404 (2d Cir. 2005) (finding that defendants' failure to "investigate—let alone verify—whether it would be medically appropriate to ignore the unanimous advice of Johnson's treating physicians" was evidence of deliberate indifference); *Weyant v. Okst*, 101 F.3d 845, 857 (2d Cir. 1996) (observing and ignoring harms can lead to an inference of deliberate indifference).

Plaintiffs have shown, the Sheriff's Office knew of and disregarded a substantial risk of harm to them and thus have established violations of both the Eighth and Fourteenth Amendments. A fortiori, Plaintiffs demonstrated that that the Sheriff's Office should have known there is an excessive risk to the health and safety of juveniles in solitary confinement thereby establishing a Fourteenth Amendment claim for pretrial detainees. *See Darnell* 849 F 3d. at 33, 35.

C. The Sheriff's Office's Use of Solitary Confinement Is Not Reasonably Calculated to Restore Facility Discipline and Safety.

Evidence that discipline is not "reasonably calculated to restore prison discipline and security" supports a finding of deliberate indifference. *Trammell*, 338 F.3d at 163-64; *see also Hope*, 536 U.S. at 737 (holding that inflicting pain without penological justification—there, hitching an inmate to an outdoor post after safety concerns had abated—violates the Eighth Amendment).

Dr. Weisman, who has implemented and monitored behavior modification plans at several facilities, opines that the Sheriff's Office's use of solitary confinement is not reasonably calculated to restore facility security or discipline. *See* Weisman Decl. ¶ 80. The experiences of other jurisdictions and the professional consensus on the subject confirm her view. *Id.* ¶¶ 79, 86. It is widely accepted that the use of isolation does nothing to rehabilitate offending youths or

deter bad behaviors. *Id.* ¶¶ 77, 79. In fact, using isolation leads to an increase in misbehaviors among juveniles including assaultive behaviors. *Id.* States that reduced the use of solitary on juveniles, including Mississippi, California, Illinois, Ohio, and Louisiana, did not create increased security risks. *Id.* ¶¶ 79, 86. Indeed, the Department of Youth Services in Ohio, which entirely eliminated disciplinary isolation, experienced a 22% decrease in violent acts in its facilities after doing so.

Even assuming for the sake of argument that isolation of juveniles in some way serves a penological interest, the practice would still violate the constitution because it is "sufficiently harmful . . . or otherwise reprehensible to civilized society," *See Madrid*, 889 F. Supp. at 1262, 1265 (holding that solitary confinement for adults with mental illnesses, brain damage, or mental retardation was cruel and unusual despite the facility's proffered justifications); *see also Mulvania v. Sheriff of Rock Island Cnty.*, 850 F.3d 849, 858 (7th Cir. 2017) ("Dignity serves an important balancing function alongside the legitimate safety and management concerns of jails and prisons.")

II. THE PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THEIR FOURTEENTH AMENDMENT AND IDEA CLAIMS FOR DENIAL OF EDUCATIONAL SERVICES.

Plaintiffs also seek preliminary injunctive relief on their federal constitutional and statutory claims arising out of the Sheriff's Office's systemic denial of educational services. As a matter of policy, the Sheriff's Office deprives all juveniles placed in solitary of meaningful educational instruction.

This deprivation violates the procedural due process clause of the Fourteenth Amendment. New York State statutes and regulations create a property interest by entitling juveniles in correctional facilities to at minimum three hours of instruction, five days a week. N.Y. Educ. L. § 3202(7); 8 N.Y. Comp. Code R. & Regs. § 118.4; 9 N.Y.C.R.R. §§ 7070.1-

7070.2; *see also Handberry v. Thompson*, 92 F. Supp. 2d 244, 249 (2000) (finding constitutionally protected property interest in education for incarcerated youth under New York's Education Law). Procedural due process protects this entitlement. *See Handberry v. Thompson*, 446 F.3d 335, 356 (2d Cir. 2006)("We also affirm the judgment insofar as it [orders a minimum of 15 hours of instruction per week] . . . on the basis of the due process of the Fourteenth Amendment.") Because the Sheriff's Office provides no process before terminating the educational services of juveniles in isolation, it deprives them of due process in violation of the Fourteenth Amendment. *See V.W.* 236 F. Supp. 3d at 586 (holding that plaintiffs were substantially likely to prevail on their Fourteenth Amendment claim by submitting significant evidence that they did not receive fifteen hours of instruction per week.)

Defendants also violate the IDEA by failing to provide a Free Appropriate Public Education ("FAPE"), with appropriate special education and related services to, juveniles with qualifying disabilities. 20 U.S.C. § 1400(d)(1)(a); 34 C.F.R. § 300.2(b)(1). Under the IDEA, the School District and Sheriff's Office share the obligation to provide juveniles with disabilities a FAPE. *See* 20 U.S.C. §, 1412(a)(12), *see also* 9 N.Y. Comp. Code R. & Regs., § 7070.3 (placing obligation on chief administrative officer of each local correctional facility to coordinate with the LEA to provide appropriate educational services); *see also V.W.* 236 F. Supp. 3d at 587. Instead of providing an FAPE, however, Defendants occasionally provide worksheets to juveniles with Individualized Educational Plans ("IEPs") in solitary confinement.

Giving a disabled child a packet of rote worksheets, without any direct instruction, cannot possibly satisfy the requirements of individualized education under the IDEA. *See V.W.* 236 F. Supp. 3d at 587-89 (granting a preliminary injunction requiring the provision of a FAPE to

juveniles with disabilities in solitary and rejecting defendants' reliance on provision of cell packets)[84].

III. PLAINTIFFS ARE SUBSTANTIALLY LIKELY TO SUCCEED ON THEIR ADA AND SECTION 504 CHALLENEGE TO THE SHERIFF'S OFFICE'S POLICIES

In order to establish a *prima facie* violation of the ADA and Section 504, Plaintiffs must establish: (1) they are qualified individuals with a disability; (2) defendants are subject to the ADA; and (3) they were denied an opportunity to participate in or benefit from the defendants' services, programs or activities or otherwise discriminated against because of their disability. *Wright v. N.Y. State Dep't of Corr. & Cmty. Supervision*, 831 F.3d 64, 72 (2d Cir. 2016).[85]

A correctional facility has the right to "impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities[; h]owever, [it] must ensure that its safety requirements are based on actual risks, not on mere speculation, stereotypes, or generalizations about individuals with disabilities." 28 C.F.R. § 35.130(h). In imposing safety requirements, a correctional facility cannot categorically deny an inmate with a disability access to available programs, services and benefits without first performing an individualized assessment. *Wright* 831 F.3d at 77-78 (holding that denying meaningful access to prison programs and services based on a blanket policy and without an individualized assessment violates the ADA); 28 C.F.R. § 35.139 (A public entity need not allow an "individual to participate in or benefit from the services, programs, or activities of that public entity" if it

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[84] *See e.g.* Individualized Educational Plan of B.C. attached to Cotter Decl. as Ex. 40; Individualized Educational Plan of A.T. attached to Cotter Decl. as Ex. 41.

[85] Only the third element is at issue because putative sub-class members are all juvenile detainees with intellectual and mental health disabilities as defined under the ADA and the Broome County Sheriff's Office is a public entity as defined by the statute. *See* 42 U.S.C. 12131(1) (B).

concludes, after "an individualized assessment," that the individual "poses a direct threat to the health or safety of others.")

According to the United States Department of Justice, an individualized assessment prior to placing an individual in solitary confinement must include (1) review of the individuals' mental health needs; (2) whether any reasonable modifications can be made to eliminate future risk; (3) whether the individual with a disability continues to pose a risk and (4) whether placement segregation is medically appropriate.[86] [87]

Many if not most of the behaviors that led to juveniles with disabilities being placed in solitary can be attributed to their adolescence or undertreated mental health or intellectual disabilities. Weisman Decl ¶ 47. Mental health workers are not consulted prior to, or after, placing a juvenile with known mental health or intellectual disabilities in solitary confinement. No individualized assessments are completed to determine the appropriateness of a placement in solitary confinement. *See supra* at 5. As discussed above, the jail's policies indicate that juveniles can be placed in solitary confinement because they have a "special mental health condition," or for behaviors that are likely directly related to their disabilities such as "exhibiting unusual behavior."[88] We have also shown that the Sheriff's Office knew the harm solitary caused juveniles in its custody but failed to act. *See Bultemeyer v. Fort Wayne Cmty. Sch.*, 100

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[86] *See* Letter from Thomas E. Perez, Assistant Attorney Gen., Civil Rights Div., U.S. Dep't of Justice, to The Honorable Tom Corbett, Governor of Pa., *Re: Investigation of the State Correctional Institution at Cresson and Notice of Expanded Investigation*, 33-34 (May 31, 2013), attached to Cotter Decl. as Ex. 37 [hereinafter Cresson Letter].

[87] As the agency charged by Congress with enforcing and implementing regulations under the ADA, the Department of Justice's interpretation of the ADA Title II regulations has been accorded deference. *See Auer v. Robbins*, 519 U.S. 452, 461, (1997) (holding an agency's interpretation of its own regulations is entitled to deference.)

[88] Inmate Handbook at 34 ("exhibit unusual behavior"); Broome Cty. Sheriff's Office, Policy Statement No. II-8-A: Administrative Segregation attached as Ex. 11 to Cotter Decl ("special mental health condition"); Broome Cty. Sheriff's Office, Policy Statement No. II-6-A: Classification attached as Ex. 14 to Cotter Decl.

F.3d 1281, 1285 (7th Cir. 1996)(holding that if an individual with a disability appears to need an accommodation but does not know how to ask for it the entity should start the process on the individual's behalf.)[89] This failure to proactively perform individualized assessments of juveniles with mental health and intellectual disabilities violates the ADA. *Chisolm v. McManimon*, 275 F.3d 315, 324-25 (3d Cir. 2001) (holding under the ADA requires jails to take "certain proactive measures to avoid . . . discrimination" against inmates with disabilities.); *See Wright* 831 F.3d at 77-78(holding that a blanket policy unresponsive to the individual needs of individuals with disabilities violates the ADA.)

IV. PLAINTIFFS SATISFY THE REMAINING ELEMENTS FOR A PRELIMINARY INJUNCTION.

Both the harm caused to Plaintiffs by the brutal conditions and isolation of solitary, and the deprivation of mandated educational and special educational services constitute irreparable harm. *V.W.*, 236 F. Supp. 3d at 588-89.

The balance of equities and public interest also weigh decidedly in Plaintiffs' favor. Any interest that the Sheriff's Office has in their use of solitary confinement is outweighed by the ongoing irreparable harm Plaintiffs suffer as a result of Defendants' constitutional and statutory violations. *V.W.* 236 F. Supp. 3d at 589. "The public interest generally supports a grant of preliminary injunctive relief where, as here, a plaintiff has demonstrated a substantial likelihood of success on the merits and a strong showing of irreparable harm," especially when the violation is constitutional as it is here. *Id.* Moreover, as there is no penological justification for Defendants' policy and practices, they do not serve the public interest. *Id.*

[89] Although the jail was on notice of the juveniles needs for an accommodation through their complaints and the jail's own observation, it is not surprising none filed a formal request for an accommodation. The Jail fails to make inmates aware of their rights under the ADA or the policies or procedures in place for inmates to request an accommodation. *See* Letter Response from Broome County Sheriff's Office attached to Cotter Decl. as Ex. 15; *See* 28 C.F.R. 35.106 (requiring a public entity to make inmates aware of their rights under the ADA.).

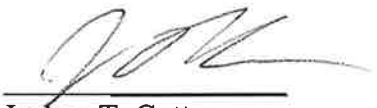
CONCLUSION

For the foregoing reasons, the Plaintiffs respectfully request that the Court grant their motion for a preliminary injunction and immediately order:

1. Juveniles shall only be locked in their cell only for disciplinary purposes where they pose an immediate threat to the safety or security of the facility and only after less restrictive measures were employed and found not adequate to address the threat;
2. If a Juvenile remains an immediate threat to the safety and security of the facility after four hours a psychiatrist shall be consulted and a plan put in place to ensure the juveniles safe return to general population;
3. Under no circumstances shall a juvenile be locked in their cell for greater than four hours;
4. The Sheriff's Office shall ensure all juveniles have access to at least three hours of educational instruction a day and IDEA mandated special education and related services;
5. If a Juvenile with a mental health or intellectual disability will potentially lose access to the benefits, services and programs offered at the Jail as a result of the disciplinary process, the Sheriff's Office shall ensure mental health staff will as soon as possible perform an individualized assessment of that juvenile and the underlying behavior. The assessment shall at minimum include the steps outlined on page 23.

Dated: February 6, 2018
Syracuse, New York

Respectfully submitted,



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